

1125
No. 3076

United States 1125
Circuit Court of Appeals

For the Ninth Circuit.

AMERICAN MANGANESE STEEL COMPANY,
a Corporation,

Appellant,

VS.


ALASKA MINES CORPORATION, a Corpora-
tion,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the District of Alaska, Second Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

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Attorneys for Plaintiff.

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F. T. MERRITT, Seattle, Wash.,

Attorneys for Defendant, Alaska Mines
Corporation.

*In the District Court for the District of Alaska, Sec-
ond Division.*

No. 2734.

AMERICAN MANGANESE STEEL COMPANY,
Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corpora-
tion, NOME CONSOLIDATED DREDG-
ING COMPANY, a Corporation, ALASKA
DREDGING COMPANY, a Corporation, E.
E. POWELL, GEORGE D. SCHOFIELD,
J. M. SLOAN, E. L. WEBSTER, M. W.
NEWTON, LOUIS EISENLOHR, F. H.
THATCHER, Trustee, C. E. DARLING,
Trustee, and E. E. POWELL, Trustee,
Defendants.

Bill of Exceptions.

BE IT REMEMBERED that on the 10th day of
July, 1917, complaint was filed herein in words and
figures as follows (title of court and cause are

omitted in all papers herein contained, being in all cases the same as the title of the court and cause of this Bill of Exceptions) :

(Title of Court and Cause.)

Complaint.

The plaintiff, addressing its complaint to the Honorable Judge of the above-entitled court, alleges as its cause of action against the defendants as follows :

I.

That the plaintiff is a corporation duly incorporated under the laws of the State of Maine, and having its principal place of business in Chicago in the State of Illinois, and the defendants, Nome Consolidated Dredging Company and the Alaska Dredging Company, are each corporations organized and existing under the laws of the State of Washington, and doing business [1*] in the said Territory of Alaska; that the Alaska Mines Corporation is a corporation organized under the laws of the State of Virginia and doing a mining business in the Territory of Alaska; and the defendant E. E. Powell is, and was, at all the times herein mentioned, vice-president and general manager of the Nome Consolidated Dredging Company, and during all of the said times was and is treasurer and general manager and a principal stockholder of the defendant Alaska Dredging Company and at all times herein mentioned and now, the said E. E. Powell, and his brothers associated with him, own and control two-thirds of the capital

*Page-number appearing at foot of page of original certified Transcript of Record.

stock of the said Alaska Dredging Company; that the defendant M. W. Newton was at all times herein mentioned, and is, the president of the said defendant Nome Consolidated Dredging Company and one of its principal stockholders; and the said defendants E. L. Webster and Louis Eisenlohr were, during all of the times herein mentioned and referred to, directors and principal stockholders in the defendant Nome Consolidated Dredging Company; that during all of the said times mentioned and herein referred to, defendant George D. Schofield was the general counsel and attorney at Nome, Alaska, of the defendants Nome Consolidated Dredging Company, Alaska Dredging Company, and E. E. Powell personally and as trustee.

II.

That the defendant Nome Consolidated Dredging Company was at and prior to the 14th day of September, 1914, indebted to this plaintiff in the sum of Twenty-five Thousand (\$25,000.00) Dollars and interest thereon, for machinery, steel and dredge equipment theretofore delivered to and used by it in its mining operations in the Nome Mining District, Alaska, which said indebtedness was evidenced by certain promissory notes executed by the said defendant Nome Consolidated Dredging Company and endorsed to the plaintiff herein, and on the 14th day of September, 1914, an action was pending in the Court of Common Pleas for the City [2] and County of Philadelphia, State of Pennsylvania, for the recovery of the amount due on said promissory notes, which were then long past due and unpaid,

which said action was entitled American Manganese Steel Company, a Corporation, Plaintiff, versus Nome Consolidated Dredging Company, a corporation, Defendant; that such proceedings were had in said action in the said Court of Common Pleas that on the 8th day of June, 1916, a judgment was recovered by this plaintiff against the Nome Consolidated Dredging Company, for the sum of Thirty Thousand Nine Hundred and Twenty (\$30,920.00) Dollars with interest and costs; that thereafter the said American Manganese Steel Company, plaintiff herein, brought action in the District Court for the District of Alaska, Second Division, being cause No. 2686, entitled American Manganese Steel Company, a Corporation, Plaintiff, versus Nome Consolidated Dredging Company, a Corporation, Defendant, on said judgment so recovered against the aforesaid Nome Consolidated Dredging Company, and on the 4th day of October, 1916, in said action in said District Court, recovered judgment against said Nome Consolidated Dredging Company in the sum of Thirty Thousand Nine Hundred Twenty (\$30,920.00) Dollars with interest and costs, and thereafter plaintiff caused an execution to be issued in said action on said judgment and the same was returned *nulla bona* by the United States Marshal for the Territory of Alaska, Second Division, and the said judgment now remains unpaid and unsatisfied, and said judgment debtor is wholly insolvent by reason of the acts and things hereinafter recited and set forth.

III.

That on the 14th day of September, 1914, and

while said defendant Nome Consolidated Dredging Company was so indebted to this plaintiff as above alleged, it, the said Nome Consolidated Dredging Company, by and through the aforesaid E. E. Powell, acting [3] as vice-president and general manager, made, executed and delivered to one F. H. Thatcher, trustee, defendant herein, a certain trust deed or mortgage, which is hereafter referred to as the Thatcher mortgage, thereby conveying to said defendant F. H. Thatcher, all its, the said Nome Consolidated Company's real and personal property, to secure an issue of promissory notes aggregating the sum of Twenty-five Thousand (\$25,000.00) Dollars, which said promissory notes consist of a series of thirty-seven (37) notes numbered consecutively, seven (7) of said notes purporting to be delivered to the Alaska Banking & Safe Deposit Company, a corporation, of Nome, Alaska, of which corporation said Thatcher was manager and principal officer, sixteen (16) of said notes, aggregating the sum of Seventy-eight Hundred Seventeen and 24/100 (\$7817.24) Dollars purported to be delivered to the mortgagor, Nome Consolidated Dredging Company, seven (7) of said notes aggregating the sum of Thirty-five Hundred (\$3500.00) Dollars purporting to be delivered to the defendant M. W. Newton, two (2) of said notes, aggregating the sum of One Thousand (\$1,000.00) Dollars purporting to be delivered to the defendant Louis Eisenlohr, four (4) of said notes aggregating the sum of Two Thousand (\$2,000.00) Dollars purporting to be delivered to the defendant E. L. Webster, and one (1) of said notes

purporting to be delivered to the defendant J. M. Sloan; that in truth and in fact all of said notes were delivered and held by the defendant E. E. Powell for the purposes hereinafter set forth and alleged; that the said Alaska Banking & Safe Deposit Company was paid in full by said defendant E. E. Powell, as general manager of the defendant Nome Consolidated Dredging Company all money, sums and amounts so secured by said Thatcher mortgage, long prior to the commencement of the foreclosure of said mortgage hereinafter set forth, and at the time of said foreclosure and when the same was commenced in the name [4] of said Thatcher as trustee, said indebtedness to said bank had been fully paid and the notes delivered to said E. E. Powell, and said bank had no interest whatever in said foreclosure proceedings; that on the 16th day of September, 1914, and only two days after said Thatcher mortgage was executed and delivered, the said Nome Consolidated Dredging Company, acting again by and through said defendant E. E. Powell, its vice-president and general manager, with intent to defraud its creditors, and particularly this plaintiff, who was then litigating its claim in the Court of Pennsylvania, as above alleged, and with the further intent to prefer certain of its officers, agents and stockholders as preferred creditors as against this plaintiff, made, executed and delivered to one J. M. Sloan, as trustee, its certain trust deed hereinafter referred to as the Sloan mortgage, conveying all the real and personal property of every nature whatsoever belonging to the said Nome Con-

solidated Dredging Company to the said J. M. Sloan as trustee, as security for the payment of a series of alleged promissory notes aggregating the sum of Two Hundred Thousand Dollars (\$200,000.00), which said alleged promissory notes were issued in a series and numbered from one (1) to seventy (70) consecutively; the said notes secured by said Sloan mortgage were, by the said trustee, pretended and alleged to be delivered as follows: Four (4) of said notes numbered 1, 34, 64 and 65 were pretended and alleged to be delivered to the defendant Louis Eisenlohr, an officer and stockholder of said mortgagor; fourteen (14) of said notes numbered 36, 37, 38, 39, 40, 49, 50, 58, 59, 60, 61, 62, and 63 aggregating the sum of Fifty-seven Thousand Six Hundred Three and 52/100 (\$57,603.52) Dollars, were pretended and alleged to be delivered to the defendant M. N. Newton, the president and a stockholder of said mortgagor; the remainder of said promissory notes, aggregating the sum of One Hundred Twenty-nine Thousand Three Hundred Forty-five and 63/100 (\$129,345.63) Dollars were pretended [5] and alleged to be delivered to the defendant Alaska Dredging Company above mentioned, said corporation being officered, owned and controlled by the said defendant E. E. Powell as above alleged; that in truth and in fact none of said notes were ever delivered but at all times were spurious and worthless and were held and kept in the possession of said E. E. Powell to further the plan, scheme and conspiracy to defraud this plaintiff as hereinafter alleged.

IV.

That prior to September, 1914, the defendant E. E. Powell entered into a plan, scheme and conspiracy with the defendants M. W. Newton, Louis Eisenlohr, E. L. Webster, George D. Schofield, the Alaska Dredging Company and others unknown to this plaintiff, whereby it was understood and agreed between them that said Thatcher mortgage and said Sloan mortgage should be made, executed and recorded and thereafter foreclosure proceedings instituted and all of the assets, real and personal, of the Nome Consolidated Dredging Company, sold so as to preclude any creditor, and particularly this plaintiff, from recovering, and to shut out all stockholders save and except the favored few who were to participate in the result of said scheme and conspiracy; that at said time it was further agreed and understood that said defendant E. E. Powell should act as the trustee of all of said persons so scheming and conspiring, and that said E. E. Powell should thereafter begin foreclosure proceedings in the District Court at Nome, and at a subsequent sale bid in all of the assets of the said defendant Nome Consolidated Dredging Company as their trustee, and that thereafter they were to organize a new company to take over the title by bill of sale and deed from said E. E. Powell as trustee, and operate the dredges, machines and mines of the said Nome Consolidated Dredging Company and participate in the ownership [6] of the stock and management in such corporation when so organized.

V.

That at the time of the making of the said Thatcher mortgage and the said Sloan mortgage in September, 1914, the said Nome Consolidated Dredging Company was wholly insolvent and was unable to pay its just debts and liabilities and that the defendants E. E. Powell, M. W. Newton, Louis Eisenlohr, E. L. Webster, George D. Schofield, and the said Alaska Dredging Company, well knew that at said time the said Nome Consolidated Dredging Company was insolvent and unable to pay its just debts and liabilities and he, the aforesaid E. E. Powell, while acting as vice-president and general manager of the said defendant Nome Consolidated Dredging Company, then and there planned, schemed and conspired with said M. W. Newton, Louis Eisenlohr, E. L. Webster and the Alaska Dredging Company to fraudulently prefer each of them to other creditors of said Nome Consolidated Dredging Company and particularly as against this plaintiff; that in pursuance of said plan, scheme and conspiracy said defendant E. E. Powell caused said Thatcher mortgage and said Sloan mortgage to be made, executed, delivered and recorded, thereby intending to cover all real and personal property belonging to the Nome Consolidated Dredging Company with liens to prevent this plaintiff, an unsecured creditor, from recovering its just claim from the assets of said debtor company.

VI.

That thereafter, pursuant to said scheme, the said E. E. Powell, on the 24th day of June, 1915, in the

name of said F. H. Thatcher, trustee, and in his own name as trustee and individually, and others, as plaintiffs, brought suit in the District Court for the District of Alaska, Second Division, being cause No. 2608, [7] entitled F. H. Thatcher, trustee, E. E. Powell, George D. Schofield, E. L. Webster, J. M. Sloan, and E. E. Powell, trustee, plaintiffs, versus Nome Consolidated Dredging Company, a corporation, and C. E. Darling, trustee, defendants, for the foreclosure of the said Thatcher mortgage; that immediately after said suit was commenced by said Powell he thereupon, as general manager of said defendant Nome Consolidated Dredging Company, employed an attorney who appeared and filed an answer in said cause, and said E. E. Powell, also employed an attorney to represent said C. E. Darling, trustee, whom he had substituted for said J. M. Sloan mentioned in said mortgage and caused said attorney to appear and file a cross complaint and answer in said suit; that said E. E. Powell, acting for all the parties and directing the proceedings for the plaintiffs, the defendants and the cross-complainants, in conformity with his scheme, plan and conspiracy to defraud the creditors of said Nome Consolidated Dredging Company, and particularly this plaintiff, caused his various counsel and attorneys to stipulate the said cause for trial immediately so that the said suit was brought on for trial before the court within seven days from the date it was commenced, to wit, on the first day of July, 1915; said Powell had entered, without objection, a decree of foreclosure prepared by his per-

sonal attorney, a copy of which decree is hereto annexed, marked Exhibit "A" and made a part hereof, which said decree, by its terms, ordered and directed a sale of all the property, real and personal, of the said Nome Consolidated Dredging Company, within the District of Alaska, to satisfy the amounts alleged to be due on the several series of notes mentioned in both of said mortgages above described, and as part and parcel of said scheme and conspiracy said Powell caused his said attorneys to prepare said decree so that said spurious and worthless notes could be used by him in bidding in said assets at the marshal's [8] sale, thereby preventing any *bona fide* bidders from bidding at said sale; that immediately thereafter said property was sold on execution by the United States marshal for the Second Division of the Territory of Alaska, and the said E. E. Powell, in conformity with his said scheme and conspiracy, bid in all the personal property of said Nome Consolidated Dredging Company, for the sum of Twenty Thousand (\$20,000.00) Dollars, and all its realty for the sum of Three Thousand (\$3,000.00) Dollars, as shown by the said marshal's return to said execution, a copy of which return is hereunto annexed, marked Exhibit "B" and made a part hereof; that at said sales appeared several *bona fide* purchasers financially able and willing to bid on said property for cash, but it was impossible for them to compete with the said Powell who was using said spurious and worthless notes under the terms of said decree, in paying for his bids made at said sales; that said Powell purchased

all of said assets of the said Nome Consolidated Dredging Company as trustee for himself and his other stockholders and conspirators, and took title at such sales, from the said marshal as such trustee for the use and benefit of said stockholders and conspirators and with intent to hinder, delay and defraud this plaintiff and other creditors and the other stockholders who were not in on said scheme so planned and carried out by said Powell.

VII.

That thereafter the said Powell caused a concern to be organized in conformity with such scheme and plan, called the Nome Holding Company, and attempted to carry out the said scheme and thereafter the said M. W. Newton, Louis Eisenlohr, E. L. Webster, the Alaska Dredging Company and said E. E. Powell, in conformity with said plan and scheme, organized the said defendant Alaska Mines Corporation, a corporation, defendant [9] above named, and with full knowledge on the part of all concerned of the fraud perpetrated upon this plaintiff and other creditors of the said Nome Consolidated Dredging Company and its innocent stockholders, transferred all of said assets, both real and personal, described in said decree above set forth, to said newly organized concern, and the said defendant Alaska Mines Corporation, thereupon took possession of all of said assets and claims to be the owner and holder thereof and entitled to the possession; that all of the stock of said new concern was subscribed and divided between said schemers and conspirators who proceeded to elect themselves and

their employees as directors and officers of said concern to manage and control the said dredges, machines and mines mentioned and described in said decree; that on the 8th day of October, 1915, the said E. E. Powell, while still acting as general manager and vice-president of the said Nome Consolidated Dredging Company, and after he had bid in all the said assets, real and personal, of the said Nome Consolidated Dredging Company, and while operating the same as trustee, made a statement under oath and filed, or caused the same to be filed with the clerk of the above-entitled court, a copy of which is hereunto annexed and marked Exhibit "C" and made a part hereof, wherein the said E. E. Powell swore that on the 30th day of June, 1915, being the day before said foreclosure trial, that the assets of said Nome Consolidated Dredging Company were far in excess of all its debts and liabilities and of the total value of \$670,906.31, but that notwithstanding, he, the said Powell, conspired and conducted said foreclosure proceedings in such a way and manner by the use of said spurious and worthless notes, and otherwise, so that all of said assets were confiscated by him and subsequently assigned and transferred to the defendant the Alaska Mines Corporation, in fraud of the rights of this plaintiff [10] who was then a creditor of said Nome Consolidated Dredging Company.

VIII.

That the said defendant E. E. Powell, as trustee, immediately after said sales above mentioned, took possession of all of the said assets of the defendant

Nome Consolidated Dredging Company and operated the dredges and mines during the remainder of the season of 1915, and he and his said co-conspirators and schemers refused to longer recognize the Nome Consolidated Dredging Company as the owner of said assets, real and personal, and for his own use and the use of his co-conspirators, kept and retained the proceeds of the said mining operations for the year 1915; that thereafter and during the year 1916 the defendant Alaska Mines Corporation was organized by the said defendants E. E. Powell, M. W. Newton, Louis Eisenlohr, E. L. Webster and the Alaska Dredging Company, with full knowledge and notice of the rights of this plaintiff as a creditor of said defendant Nome Consolidated Dredging Company, and the said E. E. Powell thereupon transferred by contract, bill of sale and deed, all of said assets, real and personal, belonging to the said Nome Consolidated Dredging Company, to the defendant Alaska Mines Corporation, and the said defendant Alaska Mines Corporation thereupon entered into the possession of the dredges, machinery, mining claims and mines and other equipment belonging to the said Nome Consolidated Dredging Company, and began to use the same in conducting mining operations on said mining claims and in said mines; that the said mining claims mentioned and described in said decree are valuable only for the gold therein contained, and when said gold is mined therefrom, will be rendered worthless; that said machinery and equipment is being used by the said defendant Alaska Mines Corporation and by reason thereof is being worn and

depreciated and in time will be rendered valueless; that [11] the said defendant Alaska Mines Corporation, claiming to be the owner of said assets set out and mentioned in said decree, threaten to dispose of the same for their own use and benefit, refusing at all times to recognize any right, title or interest therein in the said Nome Consolidated Dredging Company.

IX.

That this judgment creditor has exhausted all of its legal remedies against the said Nome Consolidated Dredging Company and is unable to collect its judgment, or any part thereof, by legal process; that plaintiff has no other remedy other than this equitable cause to subject the said assets to the payment of its claim, and in order to reserve and protect the said property *pendente lite*, it is necessary for the Court to appoint a receiver to take possession of all of said assets, real and personal, and preserve the same for distribution as hereinafter prayed for.

WHEREFORE plaintiff prays the Court for the following relief:

First: For the appointment of a receiver *pendente lite* to take possession and control and safely keep all of the assets, real and personal, mentioned and described in the decree hereunto annexed, marked Exhibit "A" and made a part of this complaint.

Second: That the Court enter a final decree herein adjudging and decreeing that the said mortgages, known as the Thatcher mortgage and the Sloan mortgage, were and are fraudulent and void as

against this plaintiff, and any other creditors or innocent stockholders, and that the said decree of foreclosure made and entered on the first day of July, 1915, and the several sales made and held thereunder, be canceled, annulled and set aside and held for naught.

Third: That upon the final hearing of this cause the said [12] receiver be made permanent and that he be directed to take possession and control of all of the said assets, real and personal, belonging to the Nome Consolidated Dredging Company, as described in the said decree, marked Exhibit "A" hereof, and that said receiver be authorized and empowered to wind up the affairs of said Nome Consolidated Dredging Company and pay its just debts and liabilities from the proceeds of the sale of said assets, including the judgment of this plaintiff.

Fourth: That upon the final hearing of this cause, should the Court find and determine that said defendants fraudulently schemed and conspired to make the sale of all of the assets, real and personal, belonging to the Nome Consolidated Dredging Company by and through said foreclosure proceedings, as alleged by the plaintiff herein, and further find that the said defendant Alaska Mines Corporation was organized by said conspirators with full knowledge and notice of the claim and rights of the plaintiff herein, and the Court deems it more equitable not to set aside said decree of foreclosure and the sales thereunder, then the plaintiff prays the Court to render a judgment or decree in favor of the plaintiff against the said E. E. Powell, M. W. Newton,

Louis Eisenlohr, the Alaska Dredging Company and the Alaska Mines Corporation, for the full amount of its judgment hereinbefore referred to, including interest, costs and disbursements, and that the Court decree the said judgment to be a first lien against the said assets, real and personal, in the possession and control of defendant Alaska Mines Corporation, and order and decree further that unless the same be paid that an execution may issue against said last-named defendants for the amount of said judgment, with costs and interest.

Fifth: That upon the final hearing of this cause if the Court finds that the defendant E. E. Powell was the vice-president [13] and general manager of the defendant, Nome Consolidated Dredging Company, and that defendant M. W. Newton was the president of said company, and that the defendants Louis Eisenlohr and E. L. Webster were directors and stockholders thereof, and that the Alaska Dredging Company was a stockholder of said Nome Consolidated Dredging Company, and that all of said parties conspired together, by and through the said acts of the said E. E. Powell to fraudulently gain control and possession of the assets, real and personal, belonging to the defendant Nome Consolidated Dredging Company, or preferred themselves as creditors as against this plaintiff, by and through the said foreclosure proceedings above alleged, then plaintiff prays the Court to grant it a personal judgment against said defendants last above mentioned, for the full amount of this judgment hereinbefore set forth, with interest, costs and accruing costs and that

it have execution against said parties for the recovery thereof.

Sixth: That upon the final hearing of this cause the Court grant to the plaintiff such other and further equitable relief as shall seem to the Court meet and proper.

Seventh: That the plaintiff herein do recover of and from the defendants, and each of them, its costs and disbursements herein expended.

WILLIAM A. GILMORE and
T. M. REED,

Attorneys for Plaintiff. [14]

United States of America,
Territory of Alaska,
Second Division,—ss.

William A. Gilmore, being duly sworn, on oath deposes and says:

That he is one of the attorneys for the plaintiff in the above-entitled action; that he has read the foregoing complaint, knows the contents thereof, and the same is true as he verily believes; that he makes this verification for and on behalf of the plaintiff corporation for the reason that said corporation has no officer or agent in the Territory of Alaska authorized to verify said complaint.

WILLIAM A. GILMORE.

Subscribed and sworn to before me this 10th day of July, 1917.

[Seal]

D. B. CHACE,
Notary Public for the Territory of Alaska, Residing
at Nome.

(My commission expires May 12th, 1921.)

Exhibit "A"—Decree of Foreclosure and Order of Sale.

*In the District Court for the Territory of Alaska,
Second Division.*

F. H. THATCHER, Trustee, E. E. POWELL,
GEO. D. SCHOFIELD, E. L. WEBSTER,
J. M. SLOAN and E. E. POWELL, Trustee,
Plaintiffs,

vs.

NOME CONSOLIDATED DREDGING COM-
PANY, a Corporation, and C. E. DARLING,
Trustee,

Defendants.

This cause came on regularly to be heard in open court [15] on this 1st day of July, 1915, upon issue joined between the plaintiffs and the defendants, Ira D. Orton appearing for plaintiffs, O. D. Cochran appearing for the defendant C. E. Darling, trustee, and James Frawley appearing for the defendant Nome Consolidated Dredging Company, and said cause was submitted to the Court upon oral and documentary evidence adduced in open court, and the argument of counsel thereon, and the Court having duly considered the evidence adduced and the argument of counsel thereon, and being fully advised in the premises, thereupon made and filed its findings of fact herein, that all of the allegations set out in the complaint of plaintiffs were true and correct and that all of the allegations set out in the cross-bill in equity of C. E. Darling, trustee, were

true and correct, and from said findings the Court deduced as conclusions of law that plaintiffs were entitled to a judgment and a decree of foreclosure and order of sale of the mortgaged property as prayed for in their complaint, and that the said C. E. Darling, trustee, was entitled to a judgment and a decree of foreclosure and order of sale as prayed for in his cross-bill in equity on file herein, except that said judgment, decree of foreclosure and order of sale of mortgaged property granted to the said C. E. Darling, trustee, was and is declared to be junior, inferior and secondary to the judgment and decree of foreclosure and order of sale of the plaintiffs herein.

And now on this day said cause came on further to be heard in open court upon the motion of Ira D. Orton, attorney for plaintiffs, joined in by O. D. Cochran, attorney for the defendant C. E. Darling, trustee, moving the Court now here to enter judgment and decree of foreclosure and order of sale of the mortgaged property in accordance with the findings of fact and conclusions of law heretofore made and entered herein, and the Court having duly considered said findings of fact and conclusions of law and now being fully advised in the premises [16] hereby sustains said motion.

AND NOW, in consideration of the law and the premises aforesaid, it is hereby ordered, adjudged and decreed that the said plaintiff F. H. Thatcher, trustee, and his co-plaintiffs herein named do have and recover of and from the said defendant Nome Consolidated Dredging Company, a corporation, the

sum of Twenty-six Thousand Four Hundred Twenty and 56/100 Dollars (\$26,420.56), together with a trustee fee of \$250, and an attorney's fee of \$100 and the costs of this suit, taxed at \$29.10, which said sums and this judgment is hereby declared to be a first and paramount valid lien upon all of the mortgaged real and personal property hereinafter described.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said defendant C. E. Darling, trustee, under his cross-bill in equity filed herein, do have and recover of and from the said defendant Nome Consolidated Dredging Company, a corporation, the sum of Two Hundred Nine Thousand Four Hundred Seventy-one and 60/100 Dollars (\$209,471.60), together with a trustee's fee of \$250.00 and an attorney fee of \$100.00, and his costs herein expended, taxed at \$1.00, which said sums and this judgment is hereby declared to be a junior, inferior and secondary valid lien upon all of the mortgaged real and personal property hereinafter described, but subject to the first and paramount lien of the judgment of the plaintiffs herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all and singular the mortgaged real and personal property mentioned in the complaint on file herein and in said cross-bill in equity, and hereinafter described, or so much thereof as may be sufficient to raise the amount found due to plaintiffs for principal, interest, trustees' fees, attorneys' fees, costs of suit and expenses of sale, be sold at public auction by the [17] United States mar-

shal for said district, in the manner prescribed by law and according to the course and practice of this court, and the same applied to the payment of the judgment of plaintiffs, and the excess, if any, applied to the payment of the judgment of the said C. E. Darling, trustee.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the United States marshal out of the proceeds of said sale, will retain his disbursements and commissions on said sale or sales and pay into the registry of this court out of the proceeds of said sale or sales the remainder of the money realized on said sale or sales, to be paid upon the judgments herein referred to in accordance with their priority as herein fixed; provided, the purchaser or purchasers at such sale or sales pay, in lieu of cash, pay therefor wholly or partly in the notes secured by said respective mortgages, in accordance with their priority as herein designated and determined, and which said notes the said United States marshal on any sale or sales made hereunder shall receive at the amount to which the holder or holders thereof would have been entitled on a distribution of the purchase price, had the same been paid wholly in cash, provided, further, that the notes represented by the judgment of plaintiffs shall be and remain first and paramount obligations to be liquidated and paid in full to the extent of the judgment of plaintiffs with interest, trustees' fees, attorneys' fees and costs of suit and sale, prior to any participation in said fund by the note holders and owners represented by the judgment of the said C. E. Darling, trustee;

the bidding power in lieu of cash vested in said plaintiffs as a first and paramount lien, being as follows:

E. E. Powell, Trustee, under notes numbered 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 33, 34, 35 and 37.....\$20,967.72

E. E. Powell (individually [18] and not as Trustee) under notes numbered 8 and 32.....\$ 1,095.34

E. L. Webster under notes numbered 15, 16, 24 and 25.....\$ 2,190.67

Geo. D. Schofield under notes numbered 29, 30 and 31.....\$ 1,643.00

J. M. Sloan under note numbered 36.....\$ 523.83

together with costs and expenses aforesaid; and which said several sums with costs aforesaid shall be received by said United States marshal in lieu of cash on any such sale or sales, without preference, priority, or distinction of one sum over the other, but *pro rata* under any and all bids on such sale or sales made by plaintiffs individually or through their said trustee or trustees.

That the bidding power in lieu of cash vested in said C. E. Darling, trustee, after the payment of the amount found due unto plaintiffs, or their receipt for such amount which shall be equivalent to cash, under the judgment rendered on the cross-bill in equity herein, and as a junior, inferior and secondary valid lien, is as follows:

Under notes numbered 1, 34, 64 and 65, endorsed in blank by L. H. Eisenlohr,
the sum of.....\$22,522.65

Under notes numbered 35, 36, 37, 38, 39,
40, 49, 50, 58, 59, 60, 61, 62 and 63,
endorsed in blank by M. W. Newton
is the sum of.....\$57,603.32

Under notes numbered 2, 3, 4, 5, 6, 7, 8, 9,
10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,
21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,
32, 33, 41, 42, 43, 44, 45, 46, 47, 48, 51,
52, 53, 54, 55, 56, 57, 66, 67, 68, 69 and
70, endorsed in blank by the Alaska
Dredging Company in the sum of..\$129,345.63

And which said sums as a bidding power, shall be subject to all of the terms and conditions granted to the sums due unto plaintiffs heretofore mentioned, except the same shall be secondary in said bidding and can only be used after the [19] extinguishment of plaintiffs' said judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the purchaser at such sale or sales be put into possession of the purchased property, and that any person or persons who, since the execution and recording of said Thatcher mortgage or said Sloan mortgage, as the case may be, has come into possession of said mortgaged real or personal property, or any part thereof, shall deliver possession of the same to the purchaser or purchasers on production of the United States marshal's certificate of sale therefor.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if the moneys arising from said sale or sales, or the moneys due hereunder used in bidding upon said sale or sales in lieu of cash as provided in this decree, shall be insufficient to pay first, the amounts found due to the plaintiffs as herein stated, and second, the amounts herein found due to C. E. Darling, trustee, aforesaid, as herein stated, then the United States marshal shall specify the amount of deficiency and balance due to the plaintiffs or the said C. E. Darling, trustee, as the case may be, in his return of said sale or sales, and that on the coming in and filing of said return the clerk of this court shall docket a judgment for said balance against the said defendant Nome Consolidated Dredging Company, and in favor of the party entitled thereto under this decree, and that said defendant Nome Consolidated Dredging Company pay said deficiency judgment with interest thereon at the rate of eight per cent per annum (8%) from the date of said last-mentioned return and judgment, and that the party entitled thereto have special execution under this decree, and upon the docketing of said deficiency judgment, have execution for said deficiency; that the judgments herein mentioned shall bear interest at the rate of eight per cent (8%) per annum from the date of entry. [20]

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the said defendant Nome Consolidated Dredging Company, a corporation, and all persons claiming or to claim by, through or under it, and all persons having liens subsequent to

said mortgages by judgment or decree upon the land described in said mortgages, and its successors or assigns, and all persons having any lien or claim by or under such subsequent judgment or decree, or their heirs or personal representatives, and all persons claiming to have acquired any estate or interest in and to said premises or any part thereof subsequent to the recording of said mortgages aforesaid, be forever barred and foreclosed of and from all equity or redemption and claim of, in, and to said mortgaged real and personal property and every part and parcel thereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the United States marshal in making any sale or sales hereunder, shall first make a sale of the personal property described in this decree, and in case the sum realized from the sale thereof is insufficient to pay the said several amounts found due hereunder, said United States marshal shall then proceed with a sale of the real property herein described, as required by law.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that special writ of execution be and the same is hereby awarded, and that the United States marshal upon receipt of a special writ of execution with a certified copy of this decree annexed thereto, shall execute this decree and order of sale as herein provided, and make due return thereto, as required by law.

The real and personal property directed to be sold under this decree and order of foreclosure is particularly described as follows: [21]

REAL PROPERTY.

Approximately one hundred and sixty-five acres of ground held and owned by the company on a part of which stands No. 3 dredge; said property is known as the "Carnation Group," situated on Wonder Creek; the Bonanza Association claim situated at the east side of the city of Nome townsite; the Anderson claim situated on the west side of the Bonanza claim, and a one-half interest in No. 4 Bench left limit of No. 4 Below on Dry Creek.

Also five hundred and forty-two acres, against which is still owing approximately twenty-six thousand dollars falling due this year and next, known as the Bell claim, a Bench off the right limit of No. 2 Flat Creek, No. 1 Above on Wonder Creek, four claims, Jewel, Gold Dust, Lucky two, No. 2 Claim and Juanita, situated off the left limit of No. 13 Below on Dry Creek, Moonlight Claim, situated second tier of Benches off No. 10 Below on Dry Creek, Combination Claim situated off of No. 4 and 5 Below right limit Dry Creek. Johnson group, one-half interest in three claims situated on the left limit of No. 2 Above on Dry Creek, and described as Tibbets, Convex and Concave claims, Big 5 claim, situated second tier benches off No. 11 and 12 Below on Dry Creek. The Milton and Dover Association claims at the mouth of Little *Little* Creek, No. 5 Peluck and No. 2 Tundra, North of the Milk Ranch east end of Nome. Sheldon, No. 2 off No. 2 Below on Wonder, L. L. Also approximately 521 acres held under twenty year lease and option from the Anvil Hydraulic and Drainage Company, owners, operated

under lease with contract providing that deed shall pass to operating company when royalty equals purchase price. This is a nearly contiguous piece of property lying along the two beds of Bourbon Creek, East Bourbon Creek, Holyoke Creek, Saturday Creek and Lake Creek, as shown by one [22] certain contract and lease recorded in Nome Recording District, District of Alaska, reference to which is hereby made.

Also 52½ acres held under lease and option for 20 years, property owned by the Alaska Dredging Company, providing also that when royalties equal purchase price deeds pass to the operating company. This property is situated on Wonder Creek and is a contiguous piece of property.

REAL AND PERSONAL PROPERTY.

Also 1 seven cubic feet open connected bucket, Bucyrus type, Dredge, built in 1909; now operating on the Chestnut Tundra Placer claim on Wonder Creek, also all the cables, and other appurtenances.

Also 1 seven cubic feet connecting bucket, Bucyrus type, Dredge, built in 1907 and 1909, rebuilt in 1912; now operating on No. 4 Below Discovery on Bourbon Creek; also all the cables and other appurtenances.

Also 1 ten cubic feet close connected bucket, Bucyrus type, Dredge, in course of construction, on No. 2 Below on Wonder Creek.

Also 1 Power Plant, Westinghouse equipment, for generating 650 K. W. Turbine driven, Babcock-Wilcox Boilers, 3 units 150 H. P. each; Auxiliary equipment complete, all on concrete building 70'x70'

overhead traveling crane; modern throughout; built in 1907; situated on No. 5 Below on Bourbon Creek.

Also 1 five thousand barrel steel tank at Power house, with $\frac{3}{4}$ mile of 4" pipe-line from storage tank at Nome to said tank and $2\frac{1}{2}$ miles of 2" pipe-line from said steel tank, running through the property to tanks used for storage for thawing operations, on No. 2 Saturday Creek.

Also one-half mile of narrow gauge railroad running [23] from the Seward Peninsula Railroad to the Power Plant.

Also two wood frame, corrugated iron warehouses, about 30x40 ft. situate on No. 5 Below on Bourbon Creek.

Also one wood construction repair shop about 20x40 feet, excepting tools therein, which is owned by Powell Bros.

Also one wood construction warehouse and shop about 20x20 feet, also situated on No. 5 Below on Bourbon Creek.

Also two wood construction mess-houses about 18x30 feet, with storehouse attached, one situated on No. 6 Below on Bourbon Creek and one on No. 2 Saturday Creek and fixtures therein.

Also five wood construction bunk-houses, also miscellaneous cabins, etc., situate on No. 5 and 6 Below on Bourbon and No. 2 Saturday Creek, and No. 1 Wonder Creek.

Also two wood construction residence buildings for superintendents in the city of Nome, and the lots on which the same are situated, described as lot 40,

block 30, and lots 10 and 11, block 91, also the furniture and fixtures therein.

Also one wood construction office building in the city of Nome, and the lots on which the same is situated, known as lots 28, 29 and 30 in block 16, of the town of Nome.

Also six miles of ditches leading from headwaters of Dry Creek to the southern limits of the property, adjoining the city of Nome.

Also miscellaneous supplies used in connection with dredging operations, spare parts, heating and thawing plants, approximate utilizable value \$35,000, situated in warehouses and piles at said power plant on Discovery Wonder and on Nos. 4, 5 and 6 Below on Bourbon Creek.

Also one combination shear and punch, situate on No. 2 Holyoke Creek. [24]

Also two 100 H. P. Boilers situate on No. 1 Bench off of No. 13 Below on Dry Creek L. L. near the junction of Steadman Avenue and Dry Creek.

Also two automobiles used in connection with the operations of the company.

Also all assaying and refining supplies, tools and utensils of all kinds and character now owned by the company.

Also three Keystone Drills in use on the company's property, one of which now sets on top of Snyder's Hill, head of Rocker Creek, and all equipment.

Also 1 oil tank situate on No. 2 Saturday Creek and pipe-line leading therefrom to Discovery Wonder.

Also all engines, boilers and piping situated in company's warehouses and on the property, together with all mining appliances and other personal property of every name, nature and description, situate in Cape Nome Precinct, Alaska. All situate and being in Cape Nome Precinct, Alaska.

Done in open court, this 1st day of July, 1915.

J. R. TUCKER,
District Judge.

Exhibit "B"—Marshal's Return to Writ of Execution.

United States of America,
District of Alaska,
Second Division,—ss.

I hereby certify that I received the hereto attached special writ of execution on the 2d day of July, 1915, and thereafter on the same day I executed the same by taking into my possession the personal property mentioned and described in the annexed writ of execution and notice of marshal's sale. And thereafter on the same day I did advertise, according to law, the sale of the personal property as mentioned and described in the [25] attached special writ of execution and notice of marshal's sale, by posting written notices of the time and place of sale, a copy of which is hereto attached and made a part hereof, said notices being posted in three public places within five miles of the place of sale, one of said notices being posted at the front door of the postoffice at Nome, Alaska, and thereafter on the 3d day of July, 1915, I did adver-

tise according to law the sale of all the right, title, and interest of the defendants in the action herein, in and to those certain placer mining claims, all lying and being situated in the Cape Nome Recording Precinct, District of Alaska, Second Division, as mentioned and described in the annexed special writ of execution and notice of marshal's sale, by posting a printed notice of the time and place of sale in three public places within five miles of the place of sale, one of said notices being posted at the front door of the postoffice at Nome, Alaska, and by causing to be published once a week for the same period, on five consecutive week intervening days, in the "Nome Daily Nugget," a newspaper of general circulation nearest the place of sale, a like notice, a copy of which with affidavit of publication is hereto attached and made a part hereof. And thereafter on the 12th day of July, 1915, at 10 o'clock A. M. I offered for sale at public vendue the following described personal property:

All the furniture and fixtures located in the lower part of the building which was and is situated on lots 28, 29 and 30, block No. 16 of the town of Nome.

and sold the same to the plaintiff, E. E. Powell, for the sum of five (\$5.00) dollars, that being the highest and best bid received for the same. And thereafter on the same day, at the places and times at which said sales were advertised to take place, according to the notice of sale of personal property hereto attached, for good and sufficient reasons, I postponed all [26] other sales of personal prop-

erty mentioned in said notice of sale, of personal property, for a period of forty-eight hours; and thereafter on the 14th day of July, 1915, at the exact times and places last above indicated, being at the places, and at the times which were forty-eight hours later than those times, set out, and indicated in said notice of sale of personal property, I offered for sale at public vendue, first in separate parcels and then as hereinafter indicated, and sold the same to the plaintiff, E. E. Powell, all of said personal property in parcels and quantities as hereinafter indicated and for the prices set opposite the description of each parcel or quantity of personal property; he being the highest and best bidder at said sales, and the amounts set opposite the description of each parcel of personal property being the highest and best sums bid at said sales to wit:

All of the office furniture located in the	
upper part of the building was and is	
located on lots 28, 29, 30, in block No.	
16 of the town of Nome.....	\$ 200.00
But not including the personal furniture in	
the 3 east rooms.	
All the furniture and fixtures located in the	
house which was and is situated on lot	
No. 40, block No. 30, in the town of	
Nome	20.00
All of the furniture and fixtures located	
in the house which was and is situated	
on lots #10 and #11, block #91, in	
the town of Nome.....	10.00

One power plant—Westinghouse equipment for generating 650 K. W. Turbine Driven Babcock-Wilcox boilers, 3 units, 150 H. P. each, Auxiliary equipment, complete.....	10,000.00
One 5,000 barrel steel tank with $\frac{3}{4}$ mile of 4" pipe and $2\frac{1}{2}$ miles 2" pipe.....	100.00
One-half mile narrow gauge railroad.....	20.00

[27]

Two wood frame, corrugated iron warehouses; one wood construction warehouse; one wood construction warehouse and shop, and one wood construction warehouse and repair house	50.00
One wood construction mess-house; three wood construction bunk-houses.....	10.00
Miscellaneous supplies used in connection with dredging; spare parts, heating and thawing plants.....	100.00
One automobile	100.00
All assaying and refining supplies, tools, and utensils	5.00
1 Keystone drill	10.00
1 seven cubic feet connected bucket Bucyrus type dredge; also all cables and appurtenances thereunto belonging	3,000.00
1 electric transmission line from power plant on Bourbon Creek to dredge on same, and 1 electric transmission line from power plant on Bourbon Creek to dredge on Wonder Creek.....	50.00

1 seven cubic feet open connected bucket, Bucyrus type dredge; all cables and appurtenances thereunto belonging..	5,000.00
1 mess-house and furniture and fixtures therein, 2 cabins	50.00
2 Keystone drills.....	100.00
1 unfinished dredge	1,000.00
2 100 H. P. boilers.....	45.00
1 thawing plant.....	50.00
1 oil tank	25.00
Supplies, materials and repair parts near Wonder Creek Dredge.....	50.00

That thereafter on the 2d day of August, 1915, in further execution of said special writ of execution, at the time and place set out and described in the printed notice of marshal's sale hereto attached and made a part hereof, I offered the real property therein described, for sale at public vendue, in separate parcels and received no bids therefor, and immediately thereafter [28] I offered all of said real property for sale in one parcel and sold the same to the plaintiff, E. E. Powell, for the sum of Three Thousand (\$3,000.00) Dollars, the said E. E. Powell being the highest and best bidder at said sale, and the above sum being the highest and best sum bid at said sale for said real property. That the said E. E. Powell, at the time of said sales, appearing to be the owner and possessor of all of the hereinafter referred to notes, tendered to me all of the notes mentioned and referred to on page four (4) of the "Decree of Foreclosure and Order of Sale" included in the hereto attached special writ of exe-

cution and requested that the total amount bid for said above-described personal property and said real property be credited and applied upon said notes, ratably, and according to the terms of said decree, and I have followed said request, causing each note to be credited with its proportionate part of the total amount bid for said personal and said real property, and I have returned all of said notes to the clerk of the court issuing said writ.

E. E. Powell, the plaintiff, has paid to me as costs, attorneys fees and trustee's fees, the sum of \$382.60, in cash, which said sum has been paid into the registry of said court by me.

Returned this 3d day of August, 1915.

E. R. JORDAN,
United States Marshal, Second Division, District of
Alaska.

By A. B. Miller,
Chief Deputy.

MARSHAL'S COSTS.

1 Service	6.00
3½% Commission on \$500.....	17.50
2% Commission on \$10,000.....	200.00
1¼% Commission on \$12,500.....	156.25
20 miles @ 20¢ mile.....	4.00
Advertising	59.00

\$442.75

Exhibit "C"—Annual Statement.

In compliance with the provisions of Chapter 23, Part V, Title III, of the Civil Code of the District of Alaska, pertaining to corporations:

1. The name of this company is NOME CONSOLIDATED DREDGING CO., organized and existing under the laws of the State of Washington, with its principal place of business in Seattle, King County, Washington, and its principal office within the District of Alaska, at Nome, therein;

2. The amount of the capital stock of said corporation is 10,000,000 dollars and the same is divided into 10,000,000 shares of the par value of \$1.00 each;

3. Three shares of said capital stock has been paid for in cash.

4. 9,999,997 shares of said capital stock have been paid for in placer gold mining locations, contracts, purchasing agreements, mining machinery and leases and other property conveyed and delivered to said corporation.

5. The actual cash value of the assets of said corporation, as shown by the books of accounts thereof, on June 30th, 1915, is 670,906.31 dollars and consists of:

Mining claims	\$107,621.19
Dredges in operation.....	337,059.48
Dredge under construction....	122,434.58
Power plant and railroad.....	76,558.58
Automobiles	1,733.26

Machine-shop building.....	112.50
Accounts receivable	754.40
Assay plant, furniture and fixtures and miscellaneous assets	24,632.22

\$670,906.31

6. The liabilities of said corporation, as shown by the books of account thereof, on June 30th, 1915, are:

Accounts payable	\$266,095.04
Bills payable	120,452.55

\$386,547.59

IN WITNESS WHEREOF the vice-president and assistant secretary of the Nome Consolidated Dredging Company have executed the foregoing instrument and affixed the corporate seal hereto, this 3d day of ———, 1915.

NOME CONSOLIDATED DREDGING
COMPANY.

[Seal]

By E. E. POWELL,
Vice-president.

By F. S. POWELL,
Assistant Secretary.

Majority of Trustees.

Attest:

E. E. POWELL.

F. S. POWELL, [30]

State of Washington,
County of King,—ss.

E. E. Powell and F. S. Powell, being first duly sworn, depose and say: That they are the vice-president and assistant secretary, respectively, of the Nome Consolidated Dredging Company, a corporation, organized and existing under the laws of the State of Washington, doing business in the District of Alaska; that they have read the foregoing statement of the affairs of said corporation, compiled from the books of account thereof on the 30th day of June, A. D. 1915; that the same is true and correct as they verily believe, and that the seal affixed thereto is the corporate seal of said corporation.

Subscribed and sworn to before me this 8th day of Oct., 1915.

[Seal]

W. W. DEARBORN,

Notary Public in and for the State of Washington,
Residing at Seattle.

10¢ rev. stamp can. 10/25/1915.

Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 10, 1917.
G. A. Adams, Clerk.

And on the same day an affidavit was filed by plaintiff in words and figures as follows:

Affidavit of William A. Gilmore.

[Title of Court and Cause.]

United States of America,

Territory of Alaska,

Second Division,—ss.

William A. Gilmore, being duly sworn, on oath deposes and says:

That he is one of the attorneys for the plaintiff herein; that he makes this affidavit for and on behalf of the plaintiff because there are no officers or agents of said plaintiff corporation now within the jurisdiction of this court.

That affiant is a practicing attorney, admitted to [31] practice in the above-entitled court and has been practicing at Nome, Alaska, for many years last past, and has been, and is, personally familiar with many of the transactions mentioned and set forth in plaintiff's complaint.

That affiant has examined the records and files in the foreclosure proceedings set forth in plaintiff's complaint and the dates and facts therein given are from the records of said actions in the above-entitled court.

That affiant was personally present at the said sales and knows that one Jafet Lindeberg, a wealthy resident of Nome, Alaska, was present at said sales intending to bid thereat, but was prevented from bidding on the sale of said assets by reason of the use by the said defendant E. E. Powell of the said spurious notes referred to in plaintiff's complaint; that affiant is personally acquainted with defendant E. E.

Powell, and on one occasion in Nome, Alaska, heard the said Powell admit that he had the said decree mentioned in plaintiff's complaint prepared by his attorneys and under the advice of his attorneys, so that he could use the said notes to prevent *bonu fide* bidders from bidding at the said sale; that affiant also, on said occasion, heard the said Powell admit and say that he was acting for the said defendants M. W. Newton, Louis Eisenlohr, the Alaska Dredging Company and himself and others whom he refused to name, and that he took the title at said sales as trustee for said persons; that affiant also heard the said Powell admit that it was his intention to organize a company and that he intended to organize a company with the said defendants last above named, and that he intended to transfer the title of the said assets so acquired by him at said sales to the said company to be so organized, and that the stock of said corporation when so organized should be apportioned and divided among the said defendants so participating in the said [32] organization; that affiant also knows that the defendant Alaska Mines Corporation is now in the possession and in the control and use of the said assets mentioned in plaintiff's complaint.

That affiant also heard the said Powell on said occasion admit that the mortgages mentioned and set forth in plaintiff's complaint were made for the purpose of protecting the parties therein named and that the said Powell also admitted that said notes were delivered to him and held by him as trustee for said persons.

That affiant, as one of the attorneys for plaintiff in cause No. 2686, secured a judgment at law for the plaintiff in the above-entitled court and subsequently caused an execution to be taken out therein and placed in the hands of the United States marshal for the Second Division of the Territory of Alaska, which said execution was returned by the marshal to the clerk of the above-entitled court recently with the marshal's return showing that no property could be found by him belonging to said judgment debtor; that the said judgment still remains wholly unpaid and unsatisfied and is a *bona fide*, existing judgment due the plaintiff by the said defendant Nome Consolidated Dredging Company.

That unless the Court appoint a receiver to take possession and control of the assets in dispute herein, the same will be dissipated, squandered and rendered of no value.

WILLIAM A. GILMORE.

Subscribed and sworn to before me this 10th day of July, 1917.

[Seal]

D. B. CHACE,

Notary Public for the Territory of Alaska, Residing at Nome.

(My commission expires May 12th, 1921.)

Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome, Alaska. Jul. 10, 1917. G. A. Adams, Clerk. [33]

And on the same day at the same time a motion was filed by the plaintiff in words and figures as follows:

**Motion for Appointment of Receiver of Nome
Consolidated Dredging Co.**

[Title of Court and Cause.]

Comes now the plaintiff and moves the Court for an order compelling and requiring the defendants to show cause, if any they have, why a receiver should not be appointed to take possession of all of the assets, real and personal, belonging to the defendant Nome Consolidated Dredging Company, mentioned, set forth and described in Exhibit "A" of plaintiff's complaint herein; and the plaintiff further moves the Court to appoint a receiver to take possession and control of all of said assets, real and personal, mentioned and described in Exhibit "A" to plaintiff's complaint, *pendente lite*, or until the further order of the Court.

This motion is made and based upon the complaint filed herein, the affidavit of William A. Gilmore, upon all the records and files of this cause, and upon all the records and files of the said action mentioned and described in plaintiff's complaint as cause No. 2608 and known as the case of F. H. Thatcher, Trustee, versus Nome Consolidated Dredging Company, a Corporation, and upon all the records, files and proceedings in any and all other actions pertaining to titles, possession and control of said assets mentioned and set forth in the complaint, and upon the records and proceedings in said cause No. 2686 entitled the American Manganese Steel Company, a Corporation, versus Nome Consolidated Dredging Company.

Dated at Nome, Alaska, this 10th day of July, 1917.

WILLIAM A. GILMORE,

T. M. REED,

Attorneys for Plaintiff. [34]

Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome, Alaska. Jul. 10, 1917. G. A. Adams, Clerk.

On consideration of said complaint, affidavit and motion, the Court made and entered its order to show cause as follows:

Order to Show Cause.

(Title of Court and Cause.)

This matter coming on before the court *ex parte* on the motion of the plaintiff for an order requiring the defendants to show cause, if any they have, why a receiver should not be appointed to take possession of the assets, real and personal, mentioned and described in the complaint, and the Court being otherwise fully advised in the premises, now

ORDERS AND DIRECTS that you, the Alaska Mines Corporation, a corporation, Nome Consolidated Dredging Company, a corporation, Alaska Dredging Company, a corporation, E. E. Powell, George D. Schofield, J. M. Sloan, E. L. Webster, M. W. Newton, Louis Eisenlohr, F. H. Thatcher, trustee, C. E. Darling, trustee, and E. E. Powell, trustee, and each of you show cause, if any you have, at the courtroom of the above-entitled court in Nome, Alaska, on Tuesday, the 17th day of July, 1917, at the hour of 11 o'clock A. M. of said day, or as soon thereafter as counsel can be heard, why a

receiver should not be appointed to take possession of all of the assets, real and personal, mentioned, described and set forth in plaintiff's complaint and as prayed for in said complaint and its motion made and filed herein.

Done in chambers this 10th day of July, 1917.

J. R. TUCKER,
District Judge.

United States of America,
Territory of Alaska,

Second Division,—ss. [35]

I hereby certify that I received a certified copy of the annexed Order to Show Cause at Nome, Alaska, on the 10th day of July, 1917, and thereafter on the same day I served the same upon the Alaska Mines Corporation by handing to and leaving with H. S. Thompson, assistant treasurer of said corporation, the said certified copy.

Returned this 28th day of July, 1917.

E. R. JORDAN,
United States Marshal.
By L. D. Lewis,
Deputy.

MARSHAL'S COSTS.

1 service\$6.00

Filed in the office of the Clerk of the District Court of Alaska, Second Division at Nome, Alaska. Jul. 10, 1917. G. A. Adams, Clerk.

BE IT FURTHER REMEMBERED that thereafter the defendant, Alaska Mines Corporation, appeared and upon its motion the hearing on Order to Show Cause was continued from time to time by

order of the Court until the 6th day of September, 1917.

BE IT FURTHER REMEMBERED that on the 1st day of September, 1917, on the motion of plaintiff the Court entered a written Order of Default against the defendants, Nome Consolidated Dredging Company, a corporation, and C. E. Darling, trustee, for failure to appear and answer.

AND BE IT FURTHER REMEMBERED that on the said 6th day of September, 1917, said Order to Show Cause having been duly served, filed and regularly continued, on said day came on to be heard before the Court. The plaintiff, being represented by Messrs. T. M. Reed and William A. Gilmore, its attorneys of record, and the defendant Alaska Mines Corporation being represented at said hearing by Messrs. O. D. Cochran, Ira D. Orton and F. D. Merritt, its attorneys of record in said cause.

The plaintiff, in support of the motion for an order appointing a receiver *pendente lite*, introduced and read in evidence the said complaint and affidavit hereinbefore set forth; and also introduced and read in evidence the original annual statement of the Nome Consolidated Dredging Company for the year [36] 1915, which was admitted in evidence and marked "Plaintiff's Exhibit 1," a copy of which exhibit is set out in full as "Exhibit 3" to plaintiff's complaint.

The plaintiff then introduced and read in evidence the deposition of E. E. Powell in the case of Geo. D. Schofield vs. E. E. Powell, No. 2630, in the District Court for the District of Alaska, Second Di-

vision, taken on the 25th day of August, 1915, before D. B. Chace, a notary public, and one of the defendants named in the above-entitled action, which said deposition was received in evidence and marked "Plaintiff's Exhibit 2," being in substance in words and figures as follows, to wit:

**Plaintiff's Exhibit No. 2—Portion of Deposition of
E. E. Powell.**

Direct Examination by Mr. GILMORE.

I am the defendant in the case of Geo. D. Schofield vs. E. E. Powell. I brought with me all the documents and papers that I had, mentioned in the subpoena.

I know of a certain agreement that I signed with certain parties, Mr. Schofield, Mr. Eisenlohr, Mr. Newton, Mr. Bremer, and another gentleman, I cannot think of his name, in New York, also signed the paper. To the best of my knowledge it was signed along in October, 1914, to about January, 1915. It was also signed by Dr. Sloan. The original is in Seattle, I believe, in the possession of my brother, F. S. Powell. There were several copies made of it, but I did not keep a copy.

I have a copy of a letter that Mr. Schofield wrote which I hand to you (letter offered and received in evidence and marked Plaintiff's Exhibit "A" to the deposition), being as follows:

Plaintiff's Exhibit "A" to Deposition of E. E. Powell—Statement of Readjustment of Organization of Nome Consolidated Dredging Company.

PLAINTIFF'S EX. "A."

"Seattle, Wash., Nov. 20, 1914.

To Eastern Co-owners of Notes Secured by Mortgage of Nome Consolidated Dredging Co.

Gentlemen:—

Readjustment of Organization of Nome Consolidated Dredging Co.

During the past five years I have been general counsel of Nome Consolidated Dredging Company, and allied corporations, at Nome, Alaska. This association has brought me in close touch with the management of the company, and has made me particularly familiar with the inner workings of the company, as well as with the value of its holdings, including power plant, dredges, mining ground, and the general operations of the company.

During my connection with the company, I have from season to season assisted in a financial way in caring [37] for pressing obligations that should have been provided for by eastern stockholders at the commencement of the dredging season. At the close of the season this year, I again assisted the management by a personal loan of money to care for obligations that had to be met to avoid litigation, with its attendant expense and financial loss, if not actual bankruptcy. In fact the company at this time is indebted to me for moneys advanced to pay

company indebtedness in an amount exceeding \$3,000.00. About one-half of this amount now stands secured under the \$25,000.00 mortgage, F. H. Thatcher, trustee, while the remaining amount stands unsecured, altho actually paid out by me in cashing time checks of the company issued to laborers upon your dredges. These time checks I still hold. I have not done this on philanthropic ground for the benefit of eastern stockholders who seem to take so little interest in their own investments, but because I desired to see the N. C. D. Co. remain a 'going concern.' With a little additional financing, there is not a concern in Alaska to-day that has the opportunity of 'making good' in a large way, that lies before this company. It absolutely controls the gold mining situation on Seward Peninsula to-day. Its holdings (mining ground) are so located that it controls the vast area of proved valuable dredging ground in the basin back of Nome thru to the foothills; a basin the like of which for proved values that can be mined at a profit, is not known to exist in Alaska, or elsewhere. This basin controlled by the company is capable of supporting a Ten Million Dollar Corporation, and paying good returns on the investment for at least fifty years to come.

The original plan of operations was correctly laid, viz: A central electric power plant, with sufficient power to operate a number of dredges, working on the unit basis; each dredge counting as a unit in the organization.

The result of this organization is to reduce all operating expenses and overhead charges upon the

installing of each additional dredge.

The company now has two dredges in operation with a third dredge in course of construction. This third dredge should be completed at once, thereby adding the third unit to your organization; doubling your output and at the same time reducing, proportionately, your operating expenses.

From your reports of past years I find that it cost you \$7,800.00 per month to operate ONE dredge; \$8,000.00 per month (now) to operate TWO dredges. The cost of operating the third dredge would be approximately \$3,000.00 per month additional; say approximately \$12,000.00 per month for operating THREE dredges as against \$7,800.00 for operating one. With the two dredges running, your output is approximately \$20,000.00 per month at a cost of approximately \$8,000. With your third dredge completed (your largest plant) your output would be approximately \$50,000.00 per month at a cost of \$12,000.00. It would seem from a business viewpoint, that comment is unnecessary. [38]

Your present mode of operation is unbusinesslike and expensive in the extreme. It lacks efficiency in financial preparation. The trouble is that you have attempted to purchase, equip, maintain and operate one of the largest and most valuable propositions known to dredge-mining on too small an amount of working capital. Ever since my connection with the company you have attempted to make the concern 'dig' its own way out, and at the same time expect it to acquire additional equipment, construct new dredges, acquire additional ground and maintain

a standard of efficiency of the dredges already working; this, too, without any additional working capital. Your theory would be all right had you sufficiently financed the enterprise in the first instance to have completed the three dredges and placed upon the ground the necessary additional equipment to maintain the dredges at a working efficiency at all times during dredging season.

This you did not do, and you ought not expect something for nothing. The present situation may be likened to an attempt to speculate upon a shoe-string or to become a King of Finance upon a dollar investment.

The whole situation may be summed up in four words, viz.: 'LACK OF WORKING CAPITAL.'

For instance: This year's output was curtailed by at least \$50,000.00 for the want of a Tumbler on the Wonder Dredge and a Motor on Bourbon Dredge; extra parts that every live concern should carry. These extras would not have cost to exceed \$1,500.00. Yet you lost nearly the entire season for want of them. In fact, to my own personal knowledge, the Tumbler on the Wonder Dredge has been cracked for the past three years, and during all that time liable to give away at any time. Moreover, I know that your manager, Mr. E. E. Powell, has time and time again called attention to this condition, and requested that these extra parts be on hand for emergency.

Again. The Nome bank-rate of interest is one per cent per month. Merchants are compelled to pay that rate. I know the company has paid out

thousands of dollars on interest charge at this high rate. This interest has been paid to the bank, to merchants and to laborers on past due time checks. No concern can pay this rate of interest and survive for any great length of time.

It occurs to me that while the eastern stockholders and bondholders of the company are industriously looking for eastern investments that will yield them 5% interest annually they are overlooking the fact that they own and control the largest and most valuable dredge-mining proposition in the world upon which they are paying 12% annual interest on large amounts for current expenses, and which valuable holdings is actually slowly starving to death for the want of a little financial assistance,—assistance, too, that would put the company upon its feet and IMMEDIATELY make the concern a large dividend payer.

Again: Inability to promptly pay off labor, merchants and current accounts has destroyed your local credit. You buy on time and pay the extra toll. Your [39] manager is unable at times to discharge an employee for want of funds. Result: Your labor is inefficient and your workmen 'soldier' on you.

In fine, 'FOR LACK OF WORKING CAPITAL' I consider you are paying from 15% to 20% above the market price for all labor employed or material purchased.

In my judgment, the most remarkable thing of the whole thing is, that your manager has been able to hold the concern together at all, at Nome. Considering the value of your mining ground, its extent

and location, the value of your power plant and three dredges as compared to the limited amount of capital invested, I consider the showing made one of the most remarkable in Alaska mining history.

There is only one thing to do to put this concern upon its feet and make it a live dividend-paying proposition, and that is to complete dredge No. 31, furnish a few extra working parts for use in case of emergency; pay off your debts, provide a small working capital to be used on emergency occasions, and then go ahead. If you will adopt this recommendation and CARRY IT INTO EFFECT NEXT SEASON, I have no hesitancy in saying that I consider you have the best paying proposition in Alaska to-day. I have arrived at this conclusion by virtue of my close connection with the company's affairs backed by fourteen years of actual continuous winter and summer experience in all classes of mining at Nome. I consider the holdings of the N. C. D. Company, and allied corporations, far more valuable than those of the Pioneer Mining Company, with its miles of ditches and acres of mining ground, and fifteen years of successful mining behind it, and many profitable years of mining ahead of it.

However, to bring your company to the front as a dividend producer, you **MUST** change your mode of operation as I have suggested above. Unless you do this, you can look for nothing but **FAILURE** and a total loss of your present investment.

If there are stockholders in your company who are financially able to assist in the suggested readjustment of the organization as above outlined, but who

refuse to do so, then my recommendation would be a foreclosure of the mortgage executed by the company and the elimination of the 'drones' in the hive, at the same time protecting those of the company and its creditors who are willing to GO ON with the proposition and take care of its financial burdens.

Those who STAY IN will, in my judgment, reap large returns for their fealty.

As one of the stockholders and bondholders of Wonder Dredging Company and a creditor of Nome Consolidated Dredging Company, I would be glad of an opportunity to participate in a readjustment of the company's affairs if undertaken along the lines I have suggested herein, or along other lines looking to the placing of the concern upon a cash basis. I know if this is done, SUCCESS is sure; if not, FAILURE and possible bankruptcy stares you in the face. [40]

Anything I can do by co-operation or by outlining a reorganization scheme or other effort that may tend to bring about the desired result along the lines herein laid down, advise me, and my services will be at your command.

Signed—GEO. D. SCHOFIELD."

Very truly yours,

Q. Now, why did you have Judge Schofield sign the agreement last winter with Dr. Sloan and yourself and Mr. Eisenlohr and several more?

A. Well, it was an outline that we would like to put through if we could.

Q. An outline of reorganization you mean?

(Deposition of E. E. Powell.)

A. Yes, sir, that we proposed to submit.

(Witness continuing:) Under that outline I was to have 25%. I don't know if it was in lieu of my holdings in the former companies. I was just asking for 25%. I was to have 15 % additional for the purpose of reorganization, for the purpose of making and drawing up this company and financing it. The 15% additional was not to be a bonus to me. It was intended as latitude to me in reorganizing. I was not giving Judge Schofield an interest in the reorganization. He had a certain interest the same as everybody else of notes held. They were going to bring in their notes, that was the outline they proposed to use if they had to bid it in. The note holders were to bid it in in the event of foreclosure. This was all conditional on foreclosure. At the time the agreement was signed, in the winter of 1914, there was no foreclosure, but there was a foreclosure contemplated; that is these people had some notes falling due and they had to do something with them. We were trying to get a plan together to take care of the foreclosure that was eventually going to be brought. There was another set of notes falling due and they were all embraced in one. My scheme was to embrace them all in one if I could; the combination outlined, that was what we wanted to follow if we could.

Q. Now, did you use the Schofield letter marked Plaintiff's Exhibit "A" and attached to this deposition, in getting Mr. Eisenlohr and others in the east to sign this plan of reorganization?

A. No, sir.

(Deposition of E. E. Powell.)

Q. You did not?

A. It wasn't for that purpose. [41]

(Witness continuing:) It was sent to some of them before they signed, but the majority have never seen it yet. Mr. Newton received the letter. He is the president of the Nome Consolidated Dredging Company. I think that Mr. Bremer received the letter also, but I am not sure of that. Dr. Sloan saw that letter, I think, but I am not sure of that. I have with me the agreement made between myself and William A. Ewing for the purchase of dredge No. 3 on Carnation Group, which I hand you; also the bill of sale from Ewing to myself. (Whereupon plaintiff offered in evidence the said agreement and said bill of sale, which were read and received in evidence and marked "Plaintiff's Exhibit 'B' and 'C' to Deposition"), being in words and figures as follows:

**Plaintiff's Exhibit "B" to Deposition of E. E. Powell
—Agreement, September 23, 1914, Between
William A. Ewing and E. E. Powell.**

PLAINTIFF'S EXHIBIT "B."

This agreement, made this day between WILLIAM A. EWING, of Nome, Alaska, hereinafter called "First Party," and E. E. Powell, of the same place, hereinafter called "Second Party," WITNESSETH:

That First Party, for and in consideration of the sum of One Dollar, and other valuable considerations, in hand paid by Second Party, the receipt whereof is hereby acknowledged, hereby agrees to

sell and convey unto Second Party, his heirs or assigns, all of the right, title and interest acquired by First Party under Execution Sale in Civil Cause No. —, District Court, District of Alaska, Second Division, in the case of William A. Ewing, plaintiff, against Ed. L. Smith, defendant, of, in and to the personal property sold to First Party under said Execution, and more particularly described in Exhibit "A" attached to this agreement, and by reference made a part hereof; said sale to be upon the following conditions, to wit:

1. The full purchase price of said property is the sum of THREE THOUSAND SEVEN HUNDRED AND THIRTY-FIVE and 55/100 DOLLARS (\$3,735.55), with interest on deferred payments from this date at the rate of 8% per annum.

2. Five Hundred Dollars (\$500.00) of said purchase price shall be paid on or before October 1st, 1914, and if such payment is not made, then this agreement shall be null and void, and the further provisions of this agreement of no force or effect whatsoever.

3. The remainder of the purchase price aforesaid shall be paid at such times and places within one year from the date hereof as said Second Party may be able to meet and make such payments. Time of payment is the essence of this agreement.

4. Each payment on said purchase price made by Second Party, his associates, heirs or assigns, shall *pro tanto* constitute a sale absolute and vest in Second Party, his associates, heirs or assigns, such proportionate interest in said property as such pay-

ments from time to time may bear to the total price, with interest [42] on deferred payments added to the time of each payment; the intention being that upon each payment made hereunder a like proportionate interest in said property shall become vested in Second Party, his associates, heirs and assigns, as such payment bears to the total purchase price.

5. Title and right of possession to said property shall be and remain in First Party, except as divested by payments hereunder, but upon such payments, then title and right of possession to said property shall vest in the parties hereto, in accordance with the payments made.

6. Upon final payment being made hereunder, First Party covenants and agrees to make, execute and deliver a Bill of Sale, with usual clauses, vesting all of his right, title and interest in said property in the purchaser or purchasers, according to payments made hereunder.

Each and every of the foregoing stipulations are subject to the agreement between the parties hereto that no sale or disposition of said property shall be made by Second Party, his associates, heirs or assigns (without the further written consent of First Party) until First Party shall have received the full purchase price of said property herein agreed upon with interest.

It is further specially agreed between the parties hereto that notwithstanding any covenant or agreement herein contained, this contract shall not be construed obligatory or binding upon Second Party, his associates or assigns, so as to be specifically en-

forced after the making of the first payment of Five Hundred Dollars (\$500) payable on or before October 1st, 1914.

IN WITNESS WHEREOF the parties hereto have this 23d day of September, 1914, executed this agreement in duplicate.

(Signed) WM. A. EWING. (Seal)

(Signed) E. E. POWELL. (Seal)

In presence of:

GEO. D. SCHOFIELD.

T. M. REED.

Territory of Alaska,
Cape Nome Precinct,—ss.

THIS CERTIFIES that on this 23d day of September, 1914, before me, the undersigned, a notary public within and for said Territory, personally came William A. Ewing and E. E. Powell, to me known to be the identical persons described in and who executed the within instrument and they acknowledged that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

WITNESS my hand and official seal at Nome, Alaska, on the day and year in this certificate first above written.

[Seal]

GEO. D. SCHOFIELD,

Notary Public for Alaska.

My commission expires July 6, 1918.

(See Exhibit "A" attached.) [43]

EXHIBIT "A."

LIST OF PERSONAL PROPERTY SITUATE
ON CARNATION PLACER CLAIM ON
FLAT CREEK, IN CAPE NOME MINING
DISTRICT, ALASKA.

- 1 unfinished dredge:
- 2 pieces of timber 18"x 8"x54'
- 1 " " " 18"x 8"x20'
- 2 " " " 20"x20"x20'
- 58 " " lumber 4"x6"x24'
- 4 " " " 3"x6"x24'
- 20 " " " 2"x6"x24'
- 9 " " " 2"x3"x24'
- 6 " " " 4"x6"x30'
- 10 " " " 6"x6"x30'
- 1200 " " various sizes of lumber (Asstd.
mostly 1" brd.)
- 17 large steel plates—asst.
- 1 lot of small steel plates
- 9 shieve housings
- 12 large hanging rods
- 20 large iron straps
- 1 anvil
- 6 small hanging rods
- 27 boxes small asst. bolts, nuts and castings
- 24 kegs of assorted bolts, nuts and castings
- 60 bolts, 3' long
- 20 bolts, 6' long
- 8 bolts, 8' long
- 1 large spud, weight approximately 17 tons
- 2 steel bars 8"x6"x12"

10 castings for bearings
400 lbs. of coke—about
800 lbs. of angle iron straps—about

A lot of miscellaneous fittings.

The foregoing list of personal property is a complete description of that certain property named and designated in contract this day executed between William A. Ewing and E. E. Powell, and to which this list is attached.

Dated September 23, 1914.

**Plaintiff's Exhibit "C" to Deposition of E. E. Powell
—Bill of Sale, October 1, 1914, Between William
A. Ewing and E. E. Powell, Trustee.**

**PLAINTIFF'S EXHIBIT "C."
BILL OF SALE.**

KNOW ALL MEN BY THESE PRESENTS:
That I, WILLIAM A. EWING, of Nome, Alaska,
the party of the first part, for and in consideration
of the sum of FIVE HUNDRED DOLLARS
(\$500.00) to me in hand paid by E. E. Powell, trustee,
the party of the second part, the receipt whereof
is hereby acknowledged, do by these presents grant,
bargain, sell and convey unto the said party of the
second part, his executors, administrators and assigns,
an undivided TWO-FIFTEENTHS (2/15)
interest of, in and to dredge No. 3 on Wonder Creek,
in Cape Nome Mining District, Alaska, together
with all appliances and parts thereto, reference being
had for a more complete description of said property
[44] to the United States marshal's Bill of Sale
of the same conveying title therein to said William

A. Ewing, recorded in Volume 197 at page 257 of the records of said district, and being Instrument No. 60,521 of said records.

To have and to hold the same unto the said party of the second part, his executors, administrators and assigns forever.

IN WITNESS WHEREOF I have hereunto set my hand and seal on this 1st day of October, 1914.

WM. A. EWING. [Seal]

In presence of:

GEO. D. SCHOFIELD.

GEO. W. DUTTON.

Taken and acknowledged before me by William A. Ewing on this 1st day of October, 1914, as his free and voluntary act and deed.

[Seal]

GEO. D. SCHOFIELD,

Notary Public for Alaska, Nome.

(My commission expires July 6, 1918.)

(Witness continuing:) I also have with me the assignment and certificate of sale of J. M. Sloan for dredge No. 3, which I hand you.

(Whereupon plaintiff offered the assignment of judgment and Bill of Sale from J. M. Sloan to E. E. Powell in evidence and the same were read and received in evidence as Plaintiff's Exhibit "D" and Plaintiff's Exhibit "E" to the deposition, being in words and figures as follows, to wit:)

**Plaintiff's Exhibit "D" to Deposition of E. E. Powell
—Assignment of Judgment in Sloan v. Smith.**

PLAINTIFF'S EXHIBIT "D."

*"In the District Court for the District of Alaska,
Second Division.*

J. M. SLOAN,

Plaintiff,

vs.

ED L. SMITH,

Defendant.

ASSIGNMENT OF JUDGMENT.

KNOW ALL MEN BY THESE PRESENTS, that I, J. M. Sloan, Plaintiff and Judgment Creditor herein, for a valuable consideration to me in hand paid by —, the receipt whereof is hereby acknowledged, do hereby sell, assign, transfer and set over to the said — all my right, title and interest in and to the Judgment rendered and entered on the — day of October, 1914, and entered of record in Judgment docket — at page — of the records of said court, hereby authorizing the said — to use all lawful ways and means at — own proper costs and charges to enforce the collection of the same.

ALSO by these presents hereby selling, assigning, [45] transferring and setting over to the said — all personal property heretofore sold under the execution issued in said court and cause.

WITNESS my hand and seal at Seattle, Washington, on this — day of November, 1914.

J. M. SLOAN. [Seal]

In presence of:

GEO. D. SCHOFIELD.

GEO. W. DUTTON.

State of Washington,

County of King,—ss.

THIS IS TO CERTIFY that on this 12th day of November, 1914, before me, the undersigned, a notary public in and for said State duly commissioned, sworn and qualified, personally appeared J. M. Sloan, to me known to be the same person described in, and who executed the foregoing assignment of Judgment and he acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

WITNESS MY HAND and official seal on this 12th day of November, 1914.

[Seal]

W. W. DEARBORN,

Notary Public in and for the State of Washington,
Residing at Seattle.

My commission expires Mar. 9th, 1919.

Plaintiff's Exhibit "E" to Deposition of E. E. Powell
—Bill of Sale of J. M. Sloan.

PLAINTIFF'S EXHIBIT "E."

"BILL OF SALE.

KNOW ALL MEN BY THESE PRESENTS, that I, J. M. Sloan of Nome, Alaska, for a valuable consideration to me in hand paid by —, the receipt whereof is hereby acknowledged, do hereby sell, assign, transfer and set over to the said —, all my right, title and interest, as acquired by me under execution sale in the case of J. M. Sloan, Plain-

tiff, Ed L. Smith, Defendant, heretofore pending in the District Court for the District of Alaska, Second Division, of, in and to all personal property sold under execution issued out of said cause, reference being hereby had and made to the return of the United States marshal on the writ of execution for a particular description of said personal property, described in general, as follows:

Dredge No. 3 situated on Wonder Creek near Flat Creek, together with all machinery and appliances thereunto belonging or in anywise appertaining;

All dredge machinery and appliances situate at the John J. Sesnon docks and warehouses at Nome, Alaska, subject to the legal lien of said last-named company for freight, wharfage and storage charges; [46]

Two certain promissory notes in the sum of Twenty-five Hundred Dollars (\$2,500) executed by the Nome Consolidated Dredging Company, Payor, to Ed L. Smith, Payee;

All of which said property is fully described in the returns from said execution, and is situated in Cape Nome Precinct, Alaska.

TO HAVE AND TO HOLD all of said described personal property under the said — forever.

WITNESS my hand and seal at Seattle, Washington, this — day of November, 1914, the intention being that the said — shall at — own proper charges and expenses, use all lawful ways and means to reduce the same to possession, or collect the same.

J. M. SLOAN. [Seal]

In presence of:

GEO. D. SCHOFIELD.

GEO. W. DUTTON.

State of Washington,

County of King,—ss.

THIS IS TO CERTIFY that on this 12th day of November, 1914, before me the undersigned, a notary public in and for said State duly commissioned, sworn and qualified *and qualified*, personally appeared J. M. Sloan, to me known to be the same person described in, and who executed the foregoing Bill of Sale, and he acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

WITNESS my hand and official seal on this 12th day of November, 1914.

[Seal]

W. W. DEARBORN,

Notary Public in and for the State of Washington,
Residing at Seattle.

My commission expires Mar. 9, 1918."

(Witness continuing:) This agreement and assignment all grew out of a suit entitled J. M. Sloan, plaintiff, versus Ed L. Smith. Judge Schofield was the attorney for the plaintiff, I think, for the Alaska Dredging Company, who owned the property, and J. M. Sloan was simply bringing it in his name. Sloan had no personal interest in it at all. I have no personal interest in Dredge No. 3, none whatever.

I own about one-sixth of the capital stock of the Alaska Dredging Company.

Q. Is there no one else interested in that company other than you or your brothers?

(Deposition of E. E. Powell.)

A. Yes, sir. [47]

Q. Who are the other stockholders?

A. Herman Beckman, J. D. Trenholme and I think the estate perhaps of Sol Simson.

Q. What amount of the stock do they own outside of you and your brothers, what proportion?

A. About a third.

Q. Then the Powell family controls two-thirds?

A. Nearly so, I think, not quite that.

(Witness continuing:) I think No. 3 dredge, or what is called the Flat Creek dredge, now stands in my name as trustee, E. E. Powell, trustee. The dredge stands on a placer claim known as the Carnation Group claim. The title of that claim stands in the name of E. E. Powell, trustee. I bought it at marshal's sale, I bid it in at the foreclosure suit sale. I bid it in personally at that sale. I have not made any transfer of it since.

I have with me the Articles of Incorporation of the Nome Holding Company, and also a letter of advice or comment, or whatever you have a mind to call it, because the company was made without my knowledge at the time it was made, in regard to the reorganization of the Nome Holding Company. I simply was talking about it in Seattle and they sent the articles to me.

(Whereupon plaintiff offered in evidence the Articles of Incorporation and the letter of advice referred to, all of which were received in evidence and marked Plaintiff's Exhibit "F" and "G," respectively.) Said exhibits being in words and figures as follows:

Plaintiff's Exhibit "F" to Deposition of E. E. Powell—Articles of Incorporation of the Nome Holding Company.

PLAINTIFF'S EXHIBIT "F."

"ARTICLES OF INCORPORATION OF THE NOME HOLDING CO.

THESE PRESENTS WITNESS: That we, J. D. Trenholm, Geo. W. Dutton and F. S. Powell, citizens of the United States and residents of the State of Washington, being desirous of forming a corporation for the purposes hereinafter specified and in conformity to the laws of the State of Washington, do hereby make and subscribe the following written articles of incorporation in triplicate:

ARTICLE I.

Name.

The name of this corporation shall be **NOME HOLDING CO.** [48]

ARTICLE II.

Objects and Purposes.

The objects and purposes for which this corporation is formed is and shall be:—

First. To acquire rights and titles by grant, option, purchase, lease or otherwise, to gold, silver, or other mineral claims, lands and deposits, situated in the State of Washington, District of Alaska, or elsewhere, in the manner provided by law, and to open, develop and mine such deposits and lands by the use of dredges, hydraulic plants, sluicing or other methods, and to carry on the general business

of mining gold, silver and other minerals for itself or as agent for others, and to deal in and deal with mines and mining properties, and to alienate, sell, encumber, lease, assign, transfer, mortgage, pledge or otherwise dispose of any of its rights, interests and properties, in whole or in part, as it may from time to time determine.

Second. To acquire by grant, purchase, lease or otherwise, and to use, hold and enjoy any and all water rights, franchises, rights and privileges, public and private, and to sell and otherwise dispose of the same, and to operate the same for its own use or for others for hire.

Third. To construct, purchase, charter, lease, own, operate, sell or otherwise dispose of transportation lines, whether by land, water, air or otherwise, to transport its products, and to carry passengers, freight and articles of value for others for hire.

Fourth. To construct, lease, own, operate and otherwise acquire telegraph and telephone lines or other means of communication, and to sell and otherwise dispose of the same, and to charge and collect tolls for the transmission of messages for others.

Fifth. To construct, acquire, lease, own, operate and maintain shops and plants for manufacturing dredging and other machinery for its own use and for others, and to carry on a general manufacturing business.

Sixth. To construct, provide, acquire, carry out, maintain, improve, manage, develop, control, take on lease or agreement, sell, assign, let, lease, license to use, work, use, operate or dispose of electric light or

power plants, electric light or power lines, quays, wharves, docks, bunkers, bridges, reservoirs, canals, water-courses, hydraulic works, electric works, gas or oil works, gas or other factories, furnaces, warehouses, shops, buildings, dwellings for employees and others, and all other works and conveniences.

Seventh. To buy, acquire, own, handle, deal in and deal with any and all kinds of goods, wares and merchandise, gold, silver and other minerals, and to carry on a general mercantile business.

Eighth. To borrow money upon bonds, notes, mortgages or other obligations, to issue bonds and debentures, and [49] to mortgage and hypothecate any and all of the property of the corporation to secure the payment of the same.

Ninth. To hold, purchase, or otherwise acquire, sell, assign, transfer, mortgage, pledge, hypothecate or otherwise dispose of shares of the capital stock, bonds, debentures or other evidence of indebtedness created by any other corporation or corporations, and while the owner thereof, to exercise all the rights and privileges of ownership, including the right to vote thereon.

Tenth. To have, exercise, possess, use and enjoy such other rights, privileges, franchises and powers as may from time to time be deemed profitable, useful or necessary, or incidental to the powers herein enumerated or requisite, or proper in the conduct of the business of this corporation, as authorized by law.

ARTICLE III.

Capital Stock.

The amount of the capital stock of this corporation shall be Fifty Thousand Dollars (\$50,000), and the same shall be divided into fifty thousand (50,000) shares of the par value of One Dollar (\$1.00) each, and said stock shall be non-assessable and fully paid.

ARTICLE IV.

Term of Existence.

The time of existence of this corporation shall be fifty (50) years from the date thereof.

ARTICLE V.

Trustees.

The number of trustees of this corporation shall not be less than three (3) or more than nine (9) and the names and residences of the trustees who shall manage the concern of this corporation until the 16th day of August, 1915, or until their successors are qualified, are:

Names.	Residences.
J. D. Trenholm,	Cor. 10th Ave. & 75th N. E., Seattle, Wn.
Geo. W. Dutton,	#415 Madison St.
F. S. Powell,	#1243—5th Ave., N.

ARTICLE VI.

Principal Place of Business.

The principal place of business of this corporation shall be located in the City of Seattle, County of King, State of Washington.

IN WITNESS WHEREOF we have this 16th day

of June, A. D. 1915, hereunto set our hands and seals in triplicate. [50]

J. D. TRENHOLM, (Seal)

GEO. W. DUTTON. (Seal)

F. S. POWELL. (Seal)

Signed, sealed and delivered in presence of:

W. W. DEARBORN.

State of Washington,

County of King,—ss.

I., W. W. DEARBORN, a notary public in and for the State of Washington, duly commissioned, sworn and qualified, do hereby certify that on this — day of June, A. D. 1915, before me personally appeared J. D. Trenholm, Geo. W. Dutton, and F. S. Powell, to me known to be the individuals described in and who executed the within instrument, and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

Given over my hand and official seal this 15th day of June, A. D. 1915.

[Seal]

W. W. DEARBORN,

Notary Public in and for the State of Washington,

Residing at Seattle.

(Commission expires Mar. 9, 1918.)"

Plaintiff's Exhibit "G" to Deposition of E. E. Powell—Letter, July 26, 1915, Powell to Powell.

PLAINTIFF'S EXHIBIT "G."

Nome, Alaska, July 26th, 1915.

Mr. F. S. Powell,
#324 New York Block,
Seattle, Wash.

Dear Brother:—

On receipt of this if you have got your organization completed, get into communication with Mr. M. W. Newton (copy of whose letter I herewith enclose you) as he will probably write you and request you to put him on the Board of 3 Trustees; this gives you a majority there at Seattle to transact business with.

Let Mr. Trenholme resign and that will leave you and Dutton on the Board. Mr. Trenholme probably does not want to be bothered with it. See my letter to Mr. Newton.

Write Mr. Newton and tell him you are ready to put him on and when this is completed I will turn the property over to the company.

Also send me in my authority to transact business the same authority given me in the N. C. Company.
[51]

(Witness continuing:) Geo. W. Dutton is an accountant at Seattle. He is not in the employ of my brother or myself. He was in our employ one year, one season.

Since 1909 I have acquired a number of mining claims in the Nome District personally, and I have some standing in my own name.

(Deposition of E. E. Powell.)

I bought the one-half interest in Lake Creek in 1905 or 1906 from Fred Anderson. It still stands in my own name. I hold it in my own name to be deeded to the interests represented whenever they are ready to pay for it. I claim it as my personal property. I could not sell it, in other words, it is under contract. As soon as they pay me the amount of money that I advanced, with interest, I will deed it to them. By interests represented I mean the same interests that I am holding all this stuff for at this time.

Q. The Nome Holding Company?

A. They are the people that will eventually take it, by "them" I mean the note holders, as soon as they pay me the money I advanced with 8% interest I am to turn it over to them.

(Witness continuing:) That amount is three thousand dollars or thirty-five hundred dollars, I have forgotten which. The claim still stands in my name. I delivered a statement to certain gentlemen.

Q. Now, this statement that you referred to as having been submitted at the time the Nome Consolidated Dredging Company was organized. To whom was that submitted?

A. The directors of the—or three or four gentlemen at least, that used to be interested in the Wonder Dredging Company, I think Mr. Eisenlohr and Mr. Newton and Mr. Bremer.

(Witness continuing:) It was simply an offer to sell the ground. It is understood that this is to be

(Deposition of E. E. Powell.)

done when they have the money to do it with. I consider myself bound to sell.

I have an interest in No. 2 on Lake Creek. I bid that interest in. I acquired it the other day on a judgment. I bid it in on the judgment the other day in a suit brought in my name against the Anvil Hydraulic and Drainage Company. I sold the Anvil Hydraulic and Drainage Company's interest in the claim and bought it in myself. I claim to own it for the interests represented in the Anvil Hydraulic and [52] Drainage Company which are co-interested with me in the entire proceedings, three-fourths of the bondholders, etc., and those standing with me. I brought suit against the Anvil Hydraulic and Drainage Company entitled E. E. Powell versus the Anvil Hydraulic and Drainage Company for some twenty-seven thousand dollars for personal services and money advanced, for myself and others. I obtained a judgment and sold the property of the Anvil Hydraulic and Drainage Company and bid it in myself. I own the property that I bid in for the parties interested with me in this proceeding, in the judgment I got against the Anvil Hydraulic and Drainage Company. I refer to Mr. Turner, my brother, Judge Schofield, and I think that there were other interests outside of that. I had two or three assigned claims embodied in the judgment.

Q. Has anybody else got any interest in this property other than those? A. Yes, sir.

Q. Who are they, name some of them?

A. Colonel W. T. Perkins.

Q. Who else?

(Deposition of E. E. Powell.)

A. I don't know just who will be interested.

Q. Name some of them. You know who you are holding it for.

A. Yes, sir, I know who I am holding it for.

Q. Name some of them.

A. At the present time I don't intend to name them.

(Witness continuing:) Colonel Perkins did not have any interest in the suit for \$27,000.00 for salary and money advanced, neither did J. D. Houghton or Mrs. Watson Allen. I do not know how much of this \$27,000.00 I claim for myself, I have no way of knowing at the present time.

Q. Now, Mr. Powell is there anybody else interested in the property that you bid in in the case of E. E. Powell versus the Anvil Hydraulic and Drainage Company other than Col. W. T. Perkins?

A. There probably will be.

(Witness continuing:) I don't know, there probably is. I could not give you the name or address of any who will know who would be interested.

I acquired an interest in No. 3 Below Discovery on Dry Creek I think in 1911 from a man named Moore. Judge Schofield patented that claim for me and it stands in my name to-day. The combination of interests to-day have the same option on that claim that they have on the others. [53]

Q. The Nome Holding Company?

A. Their interest at that time, yes, sir.

(Witness continuing:) The proposition or letter that I submitted to the gentlemen that tied up the

(Deposition of E. E. Powell.)

mining claims was submitted to the men who afterwards became directors of the Nome Consolidated Dredging Company. I would think more particularly to my associates. They did become directors of the Nome Consolidated Dredging Company later on. The claims were tied up to these gentlemen personally: they were Mr. Eisenlohr and Mr. Newton; and Mr. Newton particularly; Mr. Newton being the president of the Nome Consolidated Dredging Company; Mr. Eisenlohr was a principal stockholder.

The Nome Consolidated Dredging Company was organized subsequent to the Nome Mining Company, that is, the Nome Mining Company was first organized and then the Nome Consolidated Dredging Company was later organized. These gentlemen to whom I submitted the proposition subsequently organized the Nome Consolidated Dredging Company and became its officers.

The Bonanza claim east of town stands in my name as trustee.

Q. As trustee for whom?

A. For all interests.

Q. For the Nome Holding Company?

A. Yes, sir, or for whatever disposition the owner makes.

Q. Or those that are the organizers?

A. Yes, sir.

(Witness continuing:) The same conditions pertain to the Anderson claim east of town. It is to be the property of the Nome Holding Company if the owners so authorize me.

(Deposition of E. E. Powell.)

I don't know at this time what interest I am to have in the Nome Holding Company. I have not instructed F. S. Powell what percentage of stock to subscribe for me. I don't know if all the stock is to be issued to me and sold by me, I have not so instructed F. S. Powell.

Q. This Nome Holding Company now is to be controlled solely by Mr. Dutton and your brother as the managing directors?

A. No, sir, I don't know at this time whether they are even on the board or not, they may be.

(Witness continuing:) I have not issued any instructions but they organized with [54] a board of three trustees consisting of Trenholme, Dutton and F. S. Powell.

Q. Was not that board organized with the sole understanding and agreement that Trenholme would then resign?

A. I don't know, I didn't talk to Trenholme, but I presume that that is true.

(Witness continuing:) I did not send instructions to that effect. Wait a moment. I am not sure. It seems to me there was a letter sent to that effect but I haven't got it here. Judge Schofield didn't draw the Articles of Incorporation, he never saw them until they were sent in. They were drawn outside and sent in to me.

Q. Is it not a fact those Articles of Incorporation used by the Nome Holding Company were copies of the Articles of Incorporation of the Nome Consolidated Dredging Company?

(Deposition of E. E. Powell.)

A. Yes, sir, I think so.

(Witness continuing:) They were not marked with the amount of capital stock here in Nome and sent outside. I fixed the capital stock at \$50,000.00—that is what we talked when we were in Seattle. I don't know who selected J. D. Trenholme, F. S. Powell and Geo. W. Dutton as trustees, I did not have any hand in it.

Q. Is it not a fact that Judge Schofield suggested to you the plan in your office here in Nome of fixing the capital stock at fifty thousand dollars so that it could be apportioned *pro rata* on the twenty-five thousand dollar mortgage at double the price of the Thatcher mortgage? A. Yes, sir.

(Witness continuing:) The Articles I drew up at that time and made copies of it, but before I could send them out the Articles of Incorporation came in here from Seattle.

Q. Did you intend to *pro rata* the capital stock of the Nome Holding Company on the basis of the notes in the Thatcher mortgage?

A. I did, yes, sir, with proper protection for the other \$200,000.00. [55]

(Witness continuing:) I don't know whether or not it was in pursuance of that that the subscription stock of the Nome Holding Company was fixed at fifty thousand dollars.

Q. Now, Mr. Powell, is that not in conformity with the terms of the original agreement that was signed last winter by Dr. Sloan, Judge Schofield, yourself and others? A. I think so.

(Deposition of E. E. Powell.)

(Witness continuing:) I told Judge Schofield before he brought this suit against me that the original plan had fallen through—that I had received a telegram to that effect. Under the original plan Judge Schofield was not to have three-fiftieths, he was to have nothing, neither was any one else. That was the plan we wished to follow if we could.

Q. It was to be apportioned on the basis of the amount of the Thatcher notes?

A. The people holding them, if they wanted to, over half of them haven't signed anything.

(Witness continuing:) I don't know whether it was to be on that basis that the Nome Holding Company was to be divided or not. That was the way we would like to have it. I never told Judge Schofield on any occasion that he was to have three-fiftieths in the reorganization plan.

Q. Yet you had him join in the contract last winter and you testify now you were to divide all stock in the Nome Holding Company on the basis of the notes held in the Thatcher judgment?

A. If we could, yes, sir, as he held some of the notes he would be entitled to participate in the event he retained his interest in the foreclosure and we were successful bidders only.

Q. Now, Mr. Powell, what value do you place on the holdings, real and personal, belonging to the Nome Holding Company, or that will belong to it when it is deeded over to it?

A. I don't know what the real value of it is. [56]

Q. I asked you what value do you put on it, on the

(Deposition of E. E. Powell.)

properties that are to be deeded over or given a bill of sale to this company, the Nome Holding Company, to be organized?

A. I presume it is worth probably two hundred thousand dollars.

Q. That includes the three dredges?

A. Yes, sir.

Q. And the mining property that was bid in at the Thatcher sale as well as other interests?

A. Yes, sir. That includes that of course in the two hundred thousand dollars, as well as the Thatcher mortgage.

(Witness continuing:) We carry on our books the holdings of the Nome Consolidated Dredging Company at seven hundred thousand dollars. That was all bid in at the Thatcher sale by me individually but held by me as trustee.

Q. And this is all to be deeded over to this new company? A. Yes, sir.

Q. And to be apportioned under the plan you outlined? A. I don't know as to that.

Q. Has any one any authority to change the plan of apportionment? A. Yes, sir.

Q. Who?

A. All these note holders have authority to.

(Witness continuing:) If they ratify the plan as outlined I don't know whether it will be apportioned on the basis of the Thatcher judgment or not.

Q. Now, what was the amount of the notes held by you in the Thatcher judgment?

A. Fifteen hundred dollars.

(Deposition of E. E. Powell.)

Q. Out of a total of twenty-five thousand dollars?

A. A total of \$238,000.00.

Q. I am speaking of the Thatcher mortgage?
[57]

A. Yes, sir, but this is subject to the other as well.

Q. These so-called Darling notes were mostly held by the Alaska Dredging Company, were they not?

A. No, sir, it held \$113,000, I guess it is.

(Witness continuing:) I bid the Lawrence placer claim in in my judgment against the Anvil Hydraulic & Drainage Company. I hold it under the same conditions for the interests, the organization or reorganization to be made. It was patented and stands in the name of the Nome Consolidated Dredging Company. The Bob Lyng claims Nos. 8, 9 and 10 Below on Dry Creek, were purchased from Bob Lyng for the company in my name. They were purchased on contract for the Nome Consolidated Dredging Company. They were sold in the Thatcher foreclosure suit.

I have a personal interest also in No. 1 and 2 Saturday Creek, a one-thirty-second interest.

The Yellow Jacket claim stands in the name of the Alaska Dredging Company. Claim No. 3½ on East Bourbon was bought in by me in my judgment against the Anvil Hydraulic & Drainage Company, as well as Fraction No. 1 Mine on East Bourbon and Lucky Fraction on East Bourbon and a portion of the Northern Queen.

Q. This Darling mortgage that was made out last September, in 1914, for two hundred thousand dol-

(Deposition of E. E. Powell.)

lars. Who prepared that mortgage?

A. Judge Schofield—that is W. S. Furst, our attorney in Philadelphia, prepared it and forwarded it to me and Judge Schofield changed the affidavit of intent.

Q. Was that done at his suggestion or yours?

A. Mine, after my attention was called to it by Mr. Orton who was taking care of the bank's interest.

(Witness continuing:) That was delivered to me for the different interests. I put the Darling mortgage on record. There was some two hundred thousand dollars worth of notes made out. They were delivered to the different parties holding them.

Q. When?

A. Along in the winter, delivered personally, from the time I reached Seattle until I got back east.

Q. Give me the names of some of the ones you personally delivered those notes to. [58]

A. Well, the Alaska Dredging Company, M. W. Newton and Louis Eisenlohr.

Q. To whom did you deliver the Alaska Dredging Company's notes? A. To F. S. Powell.

Q. When did you deliver Mr. Eisenlohr's notes?

A. When I arrived in the east, about a month after I arrived.

(Witness Continuing:) Mr. Eisenlohr has never held the notes for any length of time. The delivery of the notes was about the first of December, 1914, somewhere about that time. I delivered the notes to Mr. Eisenlohr by telling him that I had them as I

(Deposition of E. E. Powell.)

had notified all the note holders, both the Thatcher notes and these others.

Q. Did you ever part with the possession of any of those notes yourself? A. Yes, sir.

Q. Did you part with the possession of Mr. Eisenlohr's notes by delivering them to him—or did you retain them in your possession?

A. I parted with them. He had them for a few days while he signed them and endorsed them over to me.

Q. When was that? When did he endorse them?

A. About March or April.

Q. What other notes of that issue of two hundred thousand dollars under the Sloan or Darling mortgage, did you part with? A. All of them.

Q. Well, give me the dates of one and to whom. You stated that you turned over \$113,000 worth of notes to F. S. Powell? A. Yes, sir.

Q. When was that?

A. That was along in the fall in 1914. I took them east with me. I am one of the directors of the Alaska Dredging Company.

Q. And did you part with them yourself, or did you retain the notes and just tell F. S. Powell you had them? [59]

A. No, sir; they were left in the office, there.

(Witness Continuing:) I turned them over to F. S. Powell for less than a week or two and he then turned them back to me. I was in Seattle two weeks before I went east in the fall of 1914 and I did not return to Seattle until the last of May or first of

(Deposition of E. E. Powell.)

June, 1915. I had the notes in my possession while I was in the east.

Q. And you had Eisenlohr's notes? A. Yes, sir.

Q. And you took Mr. Newton's notes?

A. Yes, sir.

Q. And the Alaska Dredging Company's notes?

A. Yes, sir.

Q. Did you ever part with any of those notes other than you described to your brother for a week?

A. No, I had the notes in my possession all the time as custodian for all interests other than 'as stated.

Q. Didn't you write the payees' names on each of those notes after you arrived in Nome in 1915?

A. Yes, sir; some of them.

Q. That is a fact? A. Yes, sir.

Q. So that Mr. Eisenlohr's name never appeared in the notes at all at the time you say you delivered them to him?

A. His endorsement appears on the back.

Q. His name as payee didn't appear?

A. I think I wrote it in myself.

Q. In June when you arrived in Nome?

A. Yes, sir.

Q. And about the time Mr. Darling was substituted for trustee? A. Yes, sir.

Q. About the time Mr. Darling was substituted for trustee and including the Alaska Dredging Company? [60] A. Yes, sir.

(Witness Continuing:) The writing of the payees' names in those notes and the substitution of Darling

(Deposition of E. E. Powell.)

as trustee and the foreclosure and use of those notes in bidding at the marshal's sale was not all done under the advice of Judge Schofield. It was not done for the sole purpose and no other purpose of preventing legitimate, *bona fide* bidders participating in the sale. It was done for the security of the people to be secured. It should have been taken in the first place to secure themselves.

Q. Did you not discuss with Judge Schofield the advisability of using those notes at the marshal's sale to prevent legitimate bidders bidding at that sale? A. Yes, sir.

Q. And did not Judge Schofield advise you that if the Court permitted you in a decree to use those notes that you would shut off competition at the sale up to the extent of \$225,000?

A. Yes, sir, as other attorneys advised me before he got into the case at all.

(Witness Continuing:) I am the same E. E. Powell who was a party to the various suits mentioned by you in the District Court.

Q. When you were in the east in Philadelphia this spring, before you left did you request the authorities, your Philadelphia lawyers to correspond with Judge Schofield about the foreclosure of the Thatcher mortgage?

A. In the course of conversation with the company's Philadelphia attorney and discussing the mortgages, he decided to write Mr. Schofield as to the procedure of foreclosure.

(Signed) E. E. POWELL. [61]

Plaintiff thereupon offered in evidence the affidavit of D. B. Chace, which said affidavit was, over the objection of the defendant Alaska Mines Corporation, as to its competency, read and received in evidence, being in words and figures as follows, to wit:

Affidavit of D. B. Chace.

(Title of Court and Cause.)

United States of America,
Territory of Alaska,
Second Division,—ss.

D. B. Chace, being duly sworn, on oath deposes and says: That she is a stenographer and typewriter and has been engaged in such business in Nome, Alaska, for several years last past; that on the 31st day of August, A. D. 1915, at the hour of 2 o'clock P. M. of said day, affiant was employed by the plaintiff and his attorney in the case of George D. Schofield, plaintiff, versus E. E. Powell, defendant, No. 2625, in the District Court for the District of Alaska, Second Division, to report for the plaintiff the testimony of plaintiff, George D. Schofield in said action and now one of the defendants in this case. That on said date in the office of Ira D. Orton, one of the attorneys for the defendant in said action, in the presence of the said Ira D. Orton, O. D. Cochran, E. E. Powell, and William A. Gilmore, the said George D. Schofield was sworn by Lawrence Kerr, a Notary Public in and for the Territory of Alaska, before whom his deposition was given in said action, and thereupon his testimony was taken down in

shorthand by affiant and thereafter transcribed into typewriting by affiant, said witness at said time testifying as follows:

Deposition of George D. Schofield.

Direct Examination.

Q. (By Mr. ORTON.) Mr. Schofield, you are the plaintiff in this case, I believe? A. I am. [62]

Q. How long have you known Mr. Powell?

A. Oh, I should judge fourteen or fifteen years.

Q. You brought this suit against Mr. Powell for legal services which you claim to have performed for him personally, is that it? A. Certainly.

Q. Now, did you have any contract with Mr. Powell as to your compensation for these alleged services?

A. I had an agreement with him, certainly.

Q. When did you make that agreement?

A. That agreement was made when I was first employed by Mr. Powell, I should say that was in the fall of 1909, the late summer or fall of 1909.

Q. Was this agreement oral or in writing?

A. Oral.

Q. When was it entered into?

A. Well, at the time I was employed by him originally, the winter that Judge Du Bose went out.

Q. What were the terms of the contract?

A. Well, the terms of the contract were coupled with an employment for a number of companies Mr. Powell at that time represented.

Q. What were these companies?

A. Anvil Hydraulic & Drainage Company, the

(Deposition of George D. Schofield.)

Alaska Dredging Company, the Wonder Dredging Company; I believe that was all at that time.

Q. What were the terms of the employment?

A. The terms of the employment I cannot give because I would have to refer, so far as the companies are concerned; the employment was embodied in a letter written by Mr. Powell [63] to myself. At that time Mr. Clowes had sued, about that time, he had commenced an action against the Anvil Hydraulic & Drainage Company and E. E. Powell, the defendant in this suit. I entered into an agreement with him to appear in all cases for these companies and to attend to Mr. Powell's private business, whatever it might be.

Q. And what were the terms?

A. The terms, as I say, were embodied in that letter, so far as the companies were concerned, but it was to be whatever my services would be worth, a reasonable compensation for my services. At that time Mr. Powell had in view an amalgamation of companies and we didn't know then what the work would be, but the agreement was that I would be practically in and in with him on certain combinations that were thereafter to be formed. The amount of my compensation was not fixed except this, that it would be a reasonable compensation whatever work I might do for him.

Q. Was the matter of your personal services to Mr. Powell brought up at that time in your first conversation when you entered into this written agreement with the companies?

(Deposition of George D. Schofield.)

A. I believe it was along that time. It was the same proposition he had with Judge Du Bose at that time.

Q. Judge Du Bose was living at that time, was he not? A. Yes, sir, he was.

Q. Was he to discontinue his services?

A. He had not, but he died that year. I believe, if I am not mistaken, on the outside.

Q. Did you have a conversation with Mr. Powell particularly about your legal services to him personally at that time? A. Yes, sir; certainly.

Q. And what was the conversation you held with reference to [64] being in and in with him, just state that?

A. The proposition was if these organizations were to be gotten together, in the fall of 1909,—no, the next year,—we took up the matter of the organization of the Nome Consolidated Dredging Company.

Q. Were you to get a percentage?

A. There was no percentage fixed for a number of years, but later there was.

Q. And during the several years from 1909 to the present time, or the present year, you had a written contract with the companies, did you not?

A. In the form of a letter, yes, sir.

Q. Did you have any written contract with Mr. Powell with reference to legal services to be performed for him? A. No, sir.

Q. Was this arrangement which you have stated in which you state that you were to receive a reason-

(Deposition of George D. Schofield.)

able value for your services, ever changed or modified in any way?

A. Well, not except as attempted to be changed by Mr. Powell.

Q. How did he attempt to change it, and when?

A. Well, he attempted to change it when he refused to give me the interest that I was to have in the formation of the plan or amalgamation this year for consolidating his interests.

Q. Did you ever, at any time, render a bill to Mr. Powell for any of the services performed by you under this arrangement? You say you were to receive the reasonable value of your services?

A. I did not.

Q. Why not?

A. Because I was to have an interest in the thing until he [65] forced me out absolutely; there was no necessity for rendering any bill.

Q. Do you mean by that you were to receive an interest in this amalgamation in lieu of the reasonable value of your services, is that the idea?

A. I was to receive it in lieu?

Q. Yes.

A. I was to receive the reasonable value of my services and that was fixed by Mr. Powell in the fall of 1914 after I had drafted and formulated the amalgamation and the manner of foreclosure, that was fixed at a definite amount.

Q. What was the amount?

A. It was to be a one-nineteenth at that time.

Q. Of what?

(Deposition of George D. Schofield.)

A. Of whatever properties that went into the amalgamation. Mr. Powell held certain claims in his name, certain claims in the name of the Nome Consolidated Dredging Company, certain claims in the name of the Anvil Hydraulic & Drainage Company and the formulation of this plan was to wipe out, as it were, all of these companies and form one corporation in which I was to have at that time a 1/19ths interest. I was to have nineteen dollars for every dollar that the company then owed me and was to have the money back that the company owed me, with one per cent interest.

Q. You speak of the money which the company owed you. What money do you mean?

A. The money that all the companies owed me. We talked it over, and Mr. Powell figured it at \$5,000 at that time.

Q. When was this agreement made?

A. That agreement was made,—it assumed that form in the fall of 1914 through Mr. Powell's own dictation. [66]

Q. Did you agree to that?

A. That was satisfactory to me, yes, sir; at that time.

Q. State as definitely as you can when it was that plan was definitely agreed to between you and Mr. Powell.

A. As I stated, that was in the fall of 1914.

Q. I asked you to state as definitely as you could with reference to what part of the fall?

A. I have already stated, it was while we were

(Deposition of George D. Schofield.)

formulating the mortgages that were sent east, that were changed as you well know at your own dictation to cover certain relations of the bank and the Nome Consolidated Dredging Company.

Q. Now, at the time you made this agreement by which you say you were to receive a 1/19th part, that is 1/19th part of what?

A. As I have already stated, of the combined deal. That was all to be formulated into what now stands as the Nome Holding Company. That company was organized on the basis of \$50,000 because every \$500.00 in the \$25,000 mortgage, \$50,000 was the multiple of that amount, and at that time when that was consummated, then my interest became three-fiftieths instead of 1/19ths.

Q. You misunderstand me. You were to have a 1/19th interest? A. That was the first interest.

Q. In what property? I want to get what definite properties, properties of whom?

A. All the properties carried on the books of the company at a value of \$787,000, I believe, of the Nome Consolidated Dredging Company's properties.

Q. What company? I want to get a definite idea, I want to get it into the record.

A. I have already stated it.

Q. What company? [67]

A. The Nome Consolidated Dredging Company.

Q. Any other company?

A. Whatever interest Mr. Powell had that was going into that company. He owned No. 8, No. 9 and No. 10 Dry Creek which was to go into the company.

(Deposition of George D. Schofield.)

He owned some ground east of town which was to go into this new company, the Nome Holding Company and all stock was to be issued to Mr. Powell except three shares to the holders who organized the corporation in Seattle. My interest in the \$25,000 mortgage represented 3/50ths of that corporation and that was to be my interest.

Q. Was the property of any other company outside the Nome Consolidated Dredging Company and Mr. Powell's personal holdings you spoke of, to go into this company, the Nome Holding Company, under this arrangement?

A. It certainly was, if we could get it through.

Q. What other properties?

A. The Anvil Hydraulic & Drainage Company, the Nome Mining Company properties.

Q. Any others?

A. The Wonder Dredging Company, that went in with its dredge and also included all the preferred and common stock of the Wonder Dredging Company. I was one of the stockholders of the preferred and common stock of the Wonder Dredging Company which was to go into this deal.

Q. Was any memorandum of this alleged agreement you have detailed, made in writing?

A. Not so far as Mr. Powell was concerned, not with him. He never would go in writing.

Q. Was any memorandum of it made in writing whatever by you?

A. There was a memorandum made, which was to be signed by certain [68] Eastern stockholders.

(Deposition of George D. Schofield.)

Mr. Powell signed it, and it was a formulated plan, a plan that was formulated for the entire reorganization. I asked him to produce it on the taking of his deposition and he stated he sent it to Seattle. I have no copy of it.

Q. Do you remember the terms of it?

A. I do not except that Mr. Powell was to receive 25% in lieu of his interest that he now holds, and 15% that he could dispose of as he pleased. He held 40%. I was supposed to be taken care of out of that 40% with my deal with Mr. Powell.

Q. Prior to the formulation of this agreement which you say you were to receive a 1/19th interest in a contemplated company, did you have any other agreement that Mr. Powell?

A. Only the original agreement that Mr. Powell would,—that we would go on and work together and formulate this scheme and get these properties into one, big, solid corporation and I was to have my proportion in it; and then, again, of course, I had my agreement that he was to pay me a reasonable compensation for my services in the first instance, when I went to work, but it afterwards developed into this interest in the properties and in this new big com-interest in the properties and in this new big com-terest.

Q. How was this company which you contemplated and in which you were to have a 1/19th interest, to acquire the properties, how did you contemplate you were to acquire it?

(Deposition of George D. Schofield.)

A. Under a mortgage foreclosure of \$225,000.

Q. How did you contemplate that it should be acquired at the time you made the agreement in the fall of 1914?

A. Contemplated foreclosing them under these mortgages, one mortgage for \$25,000 and another mortgage for \$200,000, to [69] protect the \$25,000 mortgage to cut out all bidders that would come on to the ground and bid over \$25,000 so we could use the \$200,000 for that purpose which was held by Mr. Powell by his notes personally, as a protection.

Q. How many of the notes under the \$25,000 mortgage did you have, did you receive?

A. I was to receive seven notes.

Q. I didn't ask you how many you were to receive, I asked you how many you did receive?

A. I received three, and gave up four to take care of the Associated Oil Company's claims.

Q. These notes, when received by you were credited on account of moneys that was owing you on account of the Nome Consolidated Dredging Company and other companies, were they not, for attorneys' fees?

A. They were credited on my account, certainly, because I was to have my money back with interest.

Q. They were given you in payment for legal services?

A. Yes, sir; for the Nome Consolidated Dredging Company.

Q. And any other companies?

A. The Nome Consolidated Dredging Company,

(Deposition of George D. Schofield.)

the work I had done for that company and allied companies.

Q. Under an express agreement?

A. Certainly, under a letter, an express contract.

Q. And so you drew up the mortgage for \$25,000. Is that a fact, Mr. Schofield?

A. I formulated that first mortgage. I formulated both mortgages, yes, sir; I devised the plan originally. It was my individual plan and submitted to Mr. Powell's counsel in Philadelphia.

Q. When was that that you submitted it to Mr. Powell's counsel [70] in Philadelphia.

A. I said Mr. Powell submitted it. He told me he did. I think that was devised first in the fall of 1913, but Mr. Powell was unable to get the Board of Directors that winter to put the thing through, but the next winter he was able to do it.

Q. When did you first conceive the idea of formulating this mortgage for \$25,000?

A. That amount was fixed at \$25,000 because of certain obligations the Nome Consolidated Dredging Company owed to the Alaska Bank. I wanted that mortgage for \$30,000 to cover certain little around-town items, but afterwards it had to be arranged in another way, namely, by the taking of four of my notes to fix up the Associated Oil Company's account.

Q. Do you remember the occasion last fall of Mr. Powell receiving from Philadelphia a mortgage already drawn purporting to be a first mortgage in the sum of \$200,000? A. Yes, sir.

Q. Did you draw that mortgage?

(Deposition of George D. Schofield.)

A. I formulated that mortgage in the first instance in 1913, Powell and myself together in Nome. It was taken out by him that year.

Q. Did you draw out a form of it?

A. It was drafted in 1913, yes, sir.

Q. What did you do with the draft you made?

A. I gave it to Mr. Powell to take east with him.

Q. Was it typewritten? A. I think it was.

Q. Did you dictate it to anybody?

A. I drew it myself on the typewriter, like I did many and many a form for Mr. Powell.

Q. Did you retain a copy of it? [71]

Q. I don't think I have a copy of it, Mr. Orton; I haven't been able to find any.

Q. That was in the fall of 1913 that you drafted and delivered to him a form of a mortgage for \$200,000?

A. I wouldn't say as to the amount. I don't think any amount was fixed in it.

Q. You remember then the occasion of when this mortgage was received here already executed?

A. I do recall a mortgage being sent back here.

Q. Was that in the same form as the one you drafted?

A. I would not say as to that.

Q. Was it substantially in the same form?

A. I would say it was on one phase of the thing. As I recall the mortgage was, we could bid the properties in, not for cash, but with the notes of the mortgage, that was the scheme all the way through, the plan I formulated and devised.

(Deposition of George D. Schofield.)

Q. Now, after the \$200,000 mortgage arrived here and was executed, what happened then?

A. Well, when the \$200,000 mortgage arrived here, Mr. Thatcher and Mr. Orton, the examiner of this examination, made some objections to the mortgage and insisted on having an individual mortgage to secure their indebtedness; they objected to the mortgage going of record, and the matter was taken up and discussed from time to time and we finally agreed upon a plan that we would issue a \$25,000 mortgage first to the Alaska Bank if they would loan to the Nome Consolidated Dredging Company a little more ready money that they needed in their business, and they accepted that \$25,000 in which they advanced something between ten and twelve thousand dollars.

Q. Now, it was contemplated, of course, at the time these mortgages were executed, that they would have to be shortly [72] foreclosed, of course, wasn't it?

A. Yes, arrangements were made before I left in the fall of 1914. I was to wire in to have Judge Reed foreclose these mortgages during the winter, and later on advices were received by Mr. Powell not to foreclose them until we came in in the spring.

Q. In the fall you had supposed that it might be necessary to foreclose them in the winter, before you came in?

A. Yes, sir; for our own benefit in following out our plan of closing this property out and getting it into one company.

Q. This property hasn't yet been collected into one company, has it?

(Deposition of George D. Schofield.)

A. The Nome Holding Company has been organized I don't know whether Mr. Powell has conveyed the properties yet or not.

Q. He would not be in a position at the present time to comply with your agreement, would he?

A. That is a question of law, I think he would. When it came to sell, Mr. Powell, when he wanted my notes of the Nome Consolidated Dredging Company to turn over to the Associated Oil Company in the fall of 1914 he represented to me, he said "\$1500.00 of this mortgage of \$25,000 is ample security for your interest, and when we come to bid on that, you are protected, you don't need any security for your outstanding interest, you are protected for \$1500." But when it came to the sale I was cut out; he bid it in personally and refused to bid it in as trustee, but bid it all in in his own name. He went up to the courthouse and bid it in for cash, paid \$1500.00 over to the marshal for me, and cut me out of my interest.

Q. These notes that were given for this \$25,000 mortgage, were all given for *bona fide* debts of the Nome Consolidated Dredging [73] Company?

A. I believe they were.

Q. And the same is true of the \$200,000 mortgage?

A. I don't know anything about that.

Q. You were familiar with the business of the company, for a great many years? A. I think so.

Q. And you have no reason to believe that this \$200,000 in notes were fictitious, have you?

A. I decline to answer that under this examination on account of conversations had with Mr. Powell him-

(Deposition of George D. Schofield.)

self over that matter. It is a matter of privilege between counsel and client.

Mr. GILMORE.—I would like to instruct my client to answer.

Mr. SCHOFIELD.—I decline to answer.

Q. Mr. Powell and the other directors of the Nome Consolidated Dredging Co. who executed this \$200,000 mortgage were acting under your advice, were they not?

A. It was originally executed in the east, but we received a telegram if it was not satisfactory to yourself and the bank here, why he should,—we had to have cash at that time to carry on business, and I advised Mr. Powell, after consultation with yourself as attorney for the bank, to wire to the board for authority to execute a new mortgage as agent, and they wired in authority and it was finally executed by Mr. Powell for the company.

Q. And the amount was simply increased to \$225,000 by giving a first mortgage for \$25,000?

A. There was a mortgage for \$25,000 and one for \$200,000.

Q. And the original mortgage as formulated was \$200,000?

A. I think so; I would not be sure as to that first mortgage [74] but that is my impression that it was.

Q. Well, did the company execute the \$200,000 mortgage acting under your advice or not?

A. In accordance with the general plan formu-

(Deposition of George D. Schofield.)

lated, certainly, certainly it was, for the purpose which I have stated.

Q. Now, the plan, as I understand it, Mr. Schofield, was for the purpose of executing these large series of notes so that the same could be used for the bidding in of the properties of the company at the foreclosure sale, without the necessity of paying cash. Am I correct in that assumption?

A. No, it was made for a double purpose.

Mr. GILMORE.—I object to that question as leading.

Mr. COCHRAN.—Certainly it is leading. It has a right to be.

Q. State the double purpose please.

A. We desired the \$200,000 mortgage to protect our bidding on the \$25,000 mortgage. If anyone came in and bid \$50,000 for the property then the mortgages were so drawn we could use \$50,000 in notes of the second mortgage and bid. If they bid \$100,000, we could use \$100,000. In other words, we were able to bid, if we had to, up to \$225,000 plus the interest on the mortgages which we held.

Q. By "we" who do you mean?

A. Well Mr. Powell and myself.

Q. Anybody else?

A. Not at the time of the sale.

Q. Well, I mean at the time the mortgage was executed who do you mean by "we"?

A. Mr. Powell and myself. He represented to me that he represented all of the other interests and would be able to secure the endorsements of all the

(Deposition of George D. Schofield.)

other people and bid it in in [75] his own name which he afterwards did so at the sale he represented 47/50ths and I represented 3/50ths of whatever was done.

Q. Now, at the time you entered into this agreement with Mr. Powell in the fall of 1914, you definitely agreed with him that you would accept this interest in lieu of and as full compensation for all the services you performed for him, personally and otherwise?

A. There was nothing stated about that at all. That was to be my interest in this deal.

Q. What services were you rendering for that interest, the services referred to in this complaint?

A. Certainly.

Q. Those are the services you were to get a 1/19ths interest, as I understand it?

A. I have already stated I was to receive my money back I had in the company, my money in the Wonder stock representing at that time \$5,000.

Q. You were to receive what money back?

A. Receive my money I had invested in this deal.

Q. This included your attorney's fee?

A. Included attorney's fees and included my Wonder stock in the Wonder Dredging Company and it included \$2,000 that had been advanced by Mrs. Schofield to take up the time checks of the Nome Consolidated Dredging Company and keep the thing upon its feet when the company could not get money to pay them with.

Q. And you were to receive that all back?

(Deposition of George D. Schofield.)

A. Yes, sir, in cash, with interest at one per cent.

Q. And you were also to receive 1/19ths interest for those services? [76]

A. That was the first agreement, but it afterwards resolved itself down to my three-fiftieths interest represented by \$1500 in the first mortgage of \$25,000.

Q. That is, the agreement for 1/19ths interest was modified, or changed to a 3/50ths interest, is that it?

A. Yes, sir.

Q. When was that modification made?

A. That was made when Mr. Powell came to me and told me he would not be able to deliver to me the notes in the \$25,000 mortgage and requested that I permit him to use these notes to satisfy the claims of the Associated Oil Company when they had commenced suit and attached the dredges and cleanups, and the notes, instead of being delivered to me were turned over, some of them, to the attorney for the Associated Oil Company. There were seven notes for \$500 each, \$3,500.00, I got three of them.

Q. Was anybody ever present when this agreement was made between yourself and Mr. Powell or discussed?

Mr. GILMORE.—Which agreement?

Q. The one for the 1/19th interest of the 3/50th interest?

A. I don't recall there was. I never transacted any business in his office until I started to foreclose these two mortgages and drafting the papers. Before that he always came to my office.

(Deposition of George D. Schofield.)

Q. I say, was anybody present?

A. I say I don't recall anybody.

Q. You don't recall that you and he ever discussed the matter in the presence of anybody?

A. I don't recall it. We may have, I wouldn't say we did not. We might have discussed it in front of Judge Murane in Seattle, or we might have discussed it in front of A. J. [77] Jarmuth, I wouldn't be sure. When we formed the Standard Hydro-Amalgamator Company for Mr. Powell and Mr. Jarmuth in Seattle this spring.

Q. Was the formation of this company a part of the services included in this?

A. It isn't mentioned there except general advice given to Mr. Powell in private matters.

Q. Did that include the formation of that particular company?

A. It includes everything I have ever done for Mr. Powell personally.

Q. I am not asking particularly if that was a part of it.

A. It might be an element in the deal.

Q. Was it or was it not part of the legal services for which you sue?

A. I had not thought of it at the time I brought that suit. I gave Mr. Powell lots of advice—

Q. You didn't include that?

A. I did not.

Q. Didn't Mr. Jarmuth pay you for that in cash?

A. Mr. Jarmuth paid me for drafting the Articles of Incorporation.

(Deposition of George D. Schofield.)

Q. That included full payment for services in the matter of organizing the company?

A. So far as the drafting of the Articles of Incorporation was concerned but he didn't pay me anything for my private advice to Mr. Powell in connection with it.

Q. How long do you expect to remain here, Mr Schofield?

A. Why, until you get through with this examination.

Q. I mean in Nome.

A. I expect to be here until the boat sails.

Q. You mean the last boat? [78]

A. It all depends entirely on my state of health. If I can I won't go out until the last sailing, it all depends on business and parties who are coming in on the "Victoria."

Mr. ORTON.—That is all.

Cross-examination.

Q. (By Mr. GILMORE.) Mr. Schofield, after you entered into the agreement you have detailed with Mr. Powell in the fall of 1909, to perform services for their reasonable value, did you, subsequent to that time, and up to the time you brought this suit, perform services for him? A. I certainly did.

Q. And filed a complaint here with an exhibit attached to it marked Exhibit "A," detailing certain services set forth in the complaint and attached to that complaint?

Mr. ORTON.—Objected to as immaterial.

(Deposition of George D. Schofield.)

Q. Did you perform the services therein detailed, to Mr. Powell, the defendant in this case?

Mr. COCHRAN.—That is objected to as irrelevant, incompetent and immaterial.

A. I did perform those services for Mr. Powell, certainly.

Q. And in the fall of 1914, I believe you stated, Mr. Powell fixed the reasonable value of your services performed by you for 1909 up to that time including what you then had contemplated in finishing up, to be a 1/19th interest in the reorganization plan that he had on foot? A. Yes, sir.

Mr. ORTON.—Objected to as leading.

Mr. GILMORE.—It certainly is, intentionally so.

Q. This is in substance what you told Mr. Orton in your direct [79] examination?

Mr. ORTON.—Objected to as leading.

A. Yes, sir.

Q. Now, at that time will you please state what that 1/19th interest was to be given you by Mr. Powell for, what it included in its entirety, providing he gave it to you?

A. That included my personal work for Mr. Powell from the date of my employment in 1909.

Q. And I believe you also stated that you were to have your money back?

A. I was to have my money back I had in the deal, which at that time he figured was \$5,000, with interest at 1% per month.

Q. In 1914 and at that time what did he state to you and what did he assume the properties that he

(Deposition of George D. Schofield.)

was listing to be valued at?

A. \$800,000.

Q. And have you figured out what 1/19th of that is worth? A. I have not.

Q. Approximately what would it be worth, would it be worth forty or fifty thousand dollars?

A. At the time that Mr. Powell talked to me, for my \$5,000 I was to have nineteen dollars for one, which would be \$95,000, that is what it would be.

Q. Before you brought this suit against Mr. Powell for the reasonable value of the services detailed and performed by you, did you make a demand on him for the interest that he had promised and stated he would give you? A. I certainly did.

Q. What did he say?

A. He said I didn't have any interest.

Q. Did you hear his deposition taken the other day in my office? [80]

A. Yes, sir.

Q. State whether or not you heard him state you hadn't a thing coming and that he had not promised you anything. A. I did.

Q. When he refused to give you the 3/50ths interest he had promised you, what further steps, if any, did you take to obtain payment for your employment?

A. I commenced this action against him for \$30,000 which I consider to be the reasonable value of my services.

Q. You are familiar with charges made for services performed similar to these, in Nome, aren't you? A. I am.

(Deposition of George D. Schofield.)

Q. How long have you practiced in the Nome district? A. Since 1900.

Q. Are you familiar with charges of attorneys for similar services? A. I am.

Q. State whether or not the sum of \$30,000 is a reasonable attorney's fee for the services performed by you during the last few years for Mr. Powell?

A. It certainly is for the services I have performed for Mr. Powell.

Q. Has he paid you any part of it?

A. He has not, not a cent of it.

Q. If Mr. Powell had given you the 3/50ths interest or something in writing to show your 3/50ths interest would you have brought this suit?

A. I would not.

Q. Did you make demand of him for payment, the way he promised he would pay you?

A. Yes. I demanded it in the marshal's office and demanded it in [81] his office and he had the nerve after all these years' work I done for him, to turn me down.

Q. Now, Mr. Orton asked you about the execution and carrying out of this plan of \$200,000 in notes. Who perfected that plan and outlined it for Mr. Powell? A. I did personally.

Q. Do you know of your own knowledge, Mr. Schofield, whether or not those \$200,000 worth of notes known as the notes embraced in the Darling mortgage, were ever actually delivered to the payees?

A. I know nothing about it.

Q. As a matter of fact, that was a fictitious mort-

(Deposition of George D. Schofield.)

gage, was it not, devised for the purpose of preventing legitimate bidders at the sale of the Thatcher mortgage? A. I decline to answer.

Q. On what ground?

A. As counsel for Mr. Powell in that whole matter. I don't think it is material to this examination.

Mr. COCHRAN.—You can state as far as we are concerned. We throw down the bars, so answer it.

Mr. SCHOFIELD.—You have my answer, gentlemen.

Q. They have waived their privilege and you can answer it. A. I don't care to at this time.

Q. Did you or did you not discuss with Mr. Powell on many occasions while you were formulating this plan, the intention to freeze out all of the stockholders of the Wonder Dredging Company, the Nome Mining Company, the Nome Consolidated Dredging Company and kindred companies?

A. Not wholly.

Q. State whether or not it was the intention to freeze out a large proportion of them unless they would come in under [82] certain terms that Mr. Powell would dictate to them in the new holding company?

A. They were to be eliminated from the ownership of stock in the new company unless they did certain things.

Q. You stated there were two reasons for floating this new mortgage. What was the third reason, to

(Deposition of George D. Schofield.)

eliminate certain stockholders who were obnoxious to Mr. Powell?

A. You will have to divide your question. I don't know what Mr. Powell's relations were with the eastern stockholders.

Q. I am asking you whether or not Mr. Powell stated this to you at the time you were formulating this plan for him, he desired to eliminate certain stockholders?

A. The stockholders who would not come through into the new corporation under certain conditions were to be absolutely eliminated.

Mr. COCHRAN.—That was in accordance with the plan you had developed?

Mr. SCHOFIELD.—That was Mr. Powell's plan.

Q. Mr. Schofield, I particularly direct your attention to one suit you claim you filed and conducted for Mr. Powell individually, Sloan versus Smith, being a suit in connection with Dredge 3 on the Carnation claim out here on Flat Creek, I believe it is, or Wonder. I will ask you to state whether or not you heard Mr. Powell's testimony with reference to this suit the other day when his deposition was taken? A. I did.

Q. Wherein he stated you were employed solely in that case by Dr. Sloan for the Alaska Dredging Company?

A. That is the first time I ever heard it.

Q. Was it true or not?

A. I was employed by Mr. Powell in that suit; that was a part [83] of the scheme to get claim and

(Deposition of George D. Schofield.)

title of that dredge in his name to carry out our plans.

Q. Did Mr. Powell ever, at any time, claim you were working for the Alaska Dredging Company in that lawsuit? A. No, sir.

Q. For whom did you perform the services in that case?

A. Performed them at Mr. Powell's request.

Q. And what was the result of that lawsuit?

A. The result was the acquiring of title to dredge No. 3 carried on the books of the company for something like \$90,000 for less than \$4,000.

Q. In whose name does it stand?

A. In Mr. Powell's.

Q. The defendant in this case?

A. Yes, sir. Also the purchasing of two notes of the Nome Consolidated Dredging Company for \$5,000 each, and the purchasing of the property of the Sesnon Company that stood in the name of Ed. L. Smith, which I left last fall, prior to the sale, which matter I left in the hands of O. D. Cochran, one of the attorneys for the defendant in this case. He forwarded the notes and bill of sale of the dredge to Seattle and I personally handed it to Frank S. Powell, E. E. Powell was not in Seattle at that time and F. S. Powell, his secretary, received it.

Q. Now, before you brought this suit for your attorney fees for the reasonable value of your services, state whether or not Mr. Powell discharged you?

A. He discharged me from the companies and also

(Deposition of George D. Schofield.)

from his personal employment. You have that letter with you.

Q. That letter of discharge was in the form of a letter?

A. It is in the form of a letter, yes, sir. [84]

Q. State whether or not through your attorney you made a demand from Mr. Powell for the amount of the services you are suing for?

A. Yes, sir; I did and furnished him with an itemized account as set forth in the exhibit.

Q. You made that demand? A. Yes, sir.

Mr. GILMORE.—That is all.

Redirect Examination.

Q. (By Mr. ORTON.) You left a bill at his office contemporaneously with the filing of this complaint?

A. Yes, sir.

Q. You don't know whether he received that before filing the complaint or not?

A. I wasn't present. My attorney, my attorney presented it.

Q. The same afternoon you filed the complaint?

A. I don't know, I didn't present that personally, my attorney attended to it.

Q. You don't know because you didn't do it yourself? A. That is it.

Q. In reference to this suit that was brought in the name of Sloan. You knew the Alaska Dredging Company's money took up that note, didn't you?

A. No, I did not.

Q. You didn't know that? A. No, sir.

(Deposition of George D. Schofield.)

Q. You didn't know anything about whose money it was? A. I did not.

Q. You were attorney for the Alaska Dredging Company at that time, weren't you? [85]

A. Whatever work Mr. Powell turned over to me to do for the Alaska Dredging Company I have always done.

Q. You had a contract by which you were to be the general counsel? A. Yes, sir.

Q. That extended during all these years from 1909 down to the present year?

A. Down to the time I was discharged by Mr. Powell's written letter.

Q. And the same may be said of the Nome Consolidated Dredging Company after it was incorporated, and also the Anvil Hydraulic & Dredging Company, and also the Wonder Dredging Company?

A. Yes, sir.

Mr. ORTON.—That is all.

D. B. CHACE.

Subscribed and sworn to before me this 21st day of August, 1917.

[Seal] J. F. HOBBS,
Notary Public for the Territory of Alaska, Residing
at Nome.

(My commission expires May 16, 1920.)

Filed in the office of the Clerk of the District Court of Alaska, Second Division at Nome, Aug. 22, 1917.
G. A. Adams, Clerk.

Plaintiff then offered in evidence the deposition of defendant E. E. Powell taken in the above-entitled

(Deposition of E. E. Powell.)

cause before D. B. Chace, a notary public, on the 5th day of September, 1917, at Nome, Alaska, and said deposition was read and received in evidence, being in substance in words and figures as follows:

Deposition of E. E. Powell.

(Title of Court and Cause.) [86]

(Witness examined by Mr. GILMORE:)

Q. Mr. Powell, you are one of the defendants in this case? A. I am.

(Witness continuing:) I have read the plaintiff's complaint and I know the property that is mentioned and included in the complaint—the list of assets, personal and real, described in the decree as set forth and annexed to the complaint. I bid that property in at the United States marshal's sale in the Thatcher trustee case in 1915, and thereafter I held it in trust as trustee during that summer up until some time in October when I transferred it to the Nome Holding Company. I was holding it in trust for the bondholders, the people whose notes, whose bonds I held on the mortgage. They were Mr. Beckman, the Alaska Dredging Company, Mr. Eisenlohr, M. W. Newton, Mr. McCoy, J. M. Sloan, Mr. Cunningham, E. E. Powell, Lewis Bremmer and E. L. Webster; I guess that is all, I don't remember whether there were any others or not, there might have been some small interests. I have not a list of all of those who had interests, with me. At or about the time that I transferred said property to the Nome Holding Company the said Nome Holding Company

(Deposition of E. E. Powell.)

executed a mortgage to me as trustee. While I was acting as trustee after the sale, after I purchased the property, and up until the time I conveyed to the Nome Holding Company, I was acting as trustee for Mr. L. H. McCoy, Mr. Cunningham, Mr. Webster and Mr. Newton, all of whom have made affidavits in this case. I was also acting for Louis H. Eisenlohr. I don't believe that he made an affidavit.

The amount of the mortgage that the Nome Holding Company gave to me at or about the time I transferred said property to it was \$200,000.00. The mortgage was recorded by me in the Cape Nome Recording District, and is a lien on all of the property that I conveyed to the Nome Holding Company. The mortgage still remains unsatisfied of record. It was given to me as trustee for some of these parties who trusted their securities to me to foreclose. Some of the ones I have mentioned.

Q. State to the Court the names of the parties that you are trustee for under that two hundred thousand dollar mortgage that still remains unsatisfied, giving all of the names as near as you can?

A. Louis Bremer. The amount due him of the two hundred thousand dollars, approximately I would say is twenty-five or thirty thousand dollars. M. W. Newton has probably forty or fifty thousand, maybe a little over that, maybe fifty-five thousand. L. H. Eisenlohr probably, I think about sixty-five thousand, somewhere around sixty thousand dollars; the Alaska Dredging [87] Company

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probably forty-five or fifty thousand dollars, about forty-five thousand dollars.

Q. Name another person for whom you are trustee under that mortgage.

A. Well, there is myself, and J. E. Powell. For myself approximately thirty thousand dollars which I won't get, I don't get that much. Well say, twenty-six thousand dollars anyway, I don't know the exact amount, that is as near as I can state it. I would say nearly thirty thousand; it may be a little over that. J. E. Powell, about, pretty near five thousand dollars I guess. F. S. Powell, also my brother, about three thousand dollars.

Q. Name another.

A. E. L. Webster. He has about two thousand dollars with interest due him, I don't know just exactly.

Q. Name another.

A. Mr. Cunningham; he has about eleven or twelve thousand dollars I should judge; I think he had eleven thousand dollars' worth of securities and interest. It would be \$11,500 more or less, I expect.

Q. Now, name some other person you were trustee for under that mortgage, if there are any?

A. Well, I just don't remember. Mr. Beckman has about thirty-two or thirty-three thousand dollars that I represent, that is one hundred cents on the dollar, to pay his claim.

Q. Now name another? Anybody else?

A. No, sir, I don't think of any more, but as represented in that mortgage some of these are one

(Deposition of E. E. Powell.)

hundred cents on the dollar and some own a percentage.

(Witness continuing:) Mr. McCoy is not one of them under the mortgage, he is eliminated and has not been paid but will be. He has notes allotted to him but I think they are not to be considered, [88] I think he is to be paid off one hundred cents on the dollar for his.

There is no agreement in existence between me and these different persons whom I represent showing the trusteeship on my part except there is a letter from me to these different gentlemen, or some of them. The letter shows that this mortgage is being held for their benefit so that if anything should happen to me it would show that the mortgage is held for the benefit of these different gentlemen.

Q. Now, Mr. Newton, Mr. Eisenlohr, yourself, E. L. Webster and Mr. Cunningham were all creditors, were all note holders under the Thatcher mortgage, were they not? A. Yes, sir, they were.

(Witness continuing:) This two hundred thousand dollar mortgage executed for the Nome Holding Company was executed at Seattle before I parted with my title, but my recollection is we deeded it to the Nome Holding Company and handed the deeds to them before the mortgage was made. The Nome Holding Company is a Washington corporation, organized under the laws of the State of Washington, with a capital of fifty thousand shares. I don't remember when the company was organized but along in the fall of 1915 shortly after I bid this prop-

(Deposition of E. E. Powell.)

erty in at the marshal's sale.

Q. Now, what amount of the stock of the Nome Holding Company do you own, Mr. Powell?

A. Well, I don't exactly know what amount I do own. I have a number of settlements to make.

(Witness continuing:) I should think that I would probably hold between one-fifth and one-fourth of the entire fifty thousand shares. I have settlements to make with a number of my associates and I don't know really where I am coming out on that yet.

Q. How much of the stock of the Nome Holding Company, Mr. Powell, was issued to you irrespective of whether you own it or someone else owns it?

A. All of it except three or four shares.

(Witness continuing:) One share was issued to George W. Dutton; one share to F. S. Powell, my brother. I am not sure that it was just one share, it may be two shares; and another share, a nominal [89] amount, was issued to J. D. Trenholme. These three were the incorporators and subscribed to the stock.

Q. And they incorporated the Nome Holding Company, electing your brother, President, J. D. Trenholme, Secretary and George W. Dutton, Director; the three of them?

A. I don't know whether that is correct or not.

(Witness continuing:) The Articles of Incorporation are on record and they will show who was President and Secretary—I don't remember. My brother, F. S. Powell, was interested in the Alaska Dredging Company as a stockholder. He is inter-

(Deposition of E. E. Powell.)

ested with me as a stockholder in the Nome Holding Company. He works on a salary.

Q. And Mr. Dutton was an employee of some of your companies, was he not?

A. He worked for us for two years,—a portion of the time for two years.

(Witness continuing:) He was in Nome for one summer as an employee in our office here. He was not an employee of our companies in Seattle.

Q. Now, all of the stock, then, except the nominal shares that were issued to these three directors, or incorporators, were issued on the stock book to you, E. E. Powell, by the Nome Holding Company?

A. Yes, that was all issued to me for value.

Q. And have you parted with any part of that stock to anybody by assignment, or otherwise, on the books? A. Yes, sir.

(Witness continuing:) Offhand, I should say somewhere near four or five thousand shares to Mr. Newton; and four or five thousand shares to Louis H. Eisenlohr; about seven thousand shares to Theron I. Crane of Philadelphia. He may have some smaller interest in addition. I assigned about three thousand shares to E. L. Webster as near as I can state. I did not give any of the Nome Holding Company capital stock to Mr. Gayley, or to Mr. Henry B. Livingston, or to Mr. August Heckscher.

Q. Now, you have told me of approximately 19,000 or 20,000 shares out of the 50,000 shares. To whom, if any other persons, did [90] you issue or assign any of the other 30,000 shares?

(Deposition of E. E. Powell.)

A. Well, there are several. There is quite a list of people there.

Q. You have assigned about 3,500 shares to a number of the Nome Mining Company shareholders or stockholders, did you not? A. Yes, sir.

(Witness continuing:) They have been buying the mortgage up against the Nome Mining Company.

Mr. Lawrence Darr of New York was the trustee of the stockholders. He was a son of George W. Darr the president of the Nome Mining Company at the time that the mortgage was given.

Q. Did you, or did you not, Mr. Powell, issue, or cause to be issued, any of the capital stock of the Nome Holding Company to shareholders of the Nome Mining Company for any purpose whatever?

A. No, sir, they were purchasing their preferred stock. I think I issued perhaps 8,000 shares. There was quite a list of people. Well, I think it was three or four thousand shares. I issued them to Mr. Reed the secretary of the Alaska Mines Corporation. Approximately I should say about 3,500 shares. I stated that there were 8,000 shares. The total amount that was given to Mr. Reed is about 3,500 instead of 8,000 shares that were issued. I am giving it all to him, and he is issuing it to different people. I think I am mistaken about the eight thousand shares. He has about that amount of stock in his possession.

Q. And the truth is there were about 3,500 shares issued to them but the stock was issued to Mr. Reed for delivery?

(Deposition of E. E. Powell.)

A. Yes, and he has perhaps delivered two-thirds of that, or half of it already.

(Witness continuing:) That would be thirty-five hundred shares instead of eight [91] thousand shares, I think that is somewheres near right.

Q. That would make about 25,000 shares or half of the stock. Now, those other 25,000 shares stand in your name at the present time, do they?

A. At the present time I don't think there is that much.

(Witness continuing:) I should say there is some 20,000 shares in my name, about 40 per cent of the capital stock. Some of it is under contract to be delivered and some of it is not.

The present Board of Directors of the Nome Holding Company are the same: F. S. Powell, J. D. Trenholme and George W. Dutton. I do not hold any office in the Nome Holding Company.

Q. You were given a general power of attorney were you not, in 1915?

A. Yes, sir, I was. I don't know whether that is revoked or not, but I don't think it is revoked.

(Witness continuing:) As far as I know, the general power of attorney is still in force. Under that power of attorney I was given authority to handle the property. I was given about the same authority that I had under my former company as general manager.

As far as I know I am the general manager of the Nome Holding Company at the present time. The three directors, J. D. Trenholme, F. S. Powell, and

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Geo. W. Dutton are only nominal stockholders and only own a small amount of stock, one or a very few shares each.

Q. Mr. T. I. Crane, Mr. Newton, Mr. Eisenlohr and yourself own a majority of the stock of the Nome Holding Company?

A. I think that we would, I am not sure of that.

(Witness continuing:) There is no agreement, oral or in writing, existing between Mr. Crane, Mr. Newton, Mr. Eisenlohr or myself with reference to voting or controlling all of the stock of the Nome Holding Company.

Q. Who organized the Alaska Mines Corporation?

A. Mr. Menken, Mr. Driscomb and Mr. Beekman.

(Witness continuing:) I don't know of W. A. Strata, F. S. Bolen or W. B. Hunting. I never heard their names before. [92]

Q. Now, the original articles of incorporation that were filed at Richmond, Virginia, gave them as the Board of Directors of the Alaska Mines Corporation?

A. That is perhaps true, I don't know.

(Witness continuing:) I don't know any of those gentlemen. I have no idea if there are any such gentlemen in existence. I don't know as a matter of fact whether they are dummy names or not. No one ever told me so—I never questioned it.

Q. Now, did you know that the Alaska Mines Corporation was going to be organized before the 9th day of June, 1916? A. Yes, sir.

Q. Who told you?

(Deposition of E. E. Powell.)

A. Why, Mr. Crane, I had a talk with him several times about organizing a company.

Q. After you transferred this property to the Nome Holding Company and got a mortgage back, you went to New York and Philadelphia that fall, didn't you? A. Yes, sir.

Q. And you went back there for the purpose of organizing a new company to exploit these properties?

A. Yes, I went back to see what I could do and we finally got down to a place where they wanted me to sell their property for them if I could.

Q. You went to Mr. Gayley to get him to organize a company to exploit this property?

A. I went to him after a while; I went to several gentlemen.

Q. And as a result of numerous negotiations with Mr. Gayley the Alaska Mines Corporation was organized, was it not? A. Yes, sir.

Q. At the time mentioned? A. Yes, sir. [93]

(Witness continuing:) I don't know how soon after the 9th day of June Strata, Bolen and Hunting resigned as officers and directors. I don't know the date when the new directors were elected. I became a director of the Alaska Mines Corporation some time in June or July, 1916, the same year that the company was organized. I was elected a director in New York. Those present at the time I was elected were Mr. Gayley, Mr. Crane, August Heckscher, and I don't know who were directors at that time, I don't remember. I think that Mr. Newton was present

(Deposition of E. E. Powell.)

also, but Mr. Eisenlohr was not there.

Q. So that a new board was elected at that meeting consisting of seven directors, is that correct?

A. Yes, sir.

(Witness continuing:) I don't know whether it was at that meeting or not, but anyhow either at that meeting or the next meeting they increased their board to seven. We held several meetings in June and July after the organization of the company and at some of those meetings the seven men were elected; the seven directors being Mr. Gayley, Mr. Newton, Mr. Eisenlohr, Mr. Crane, Mr. Livingston, Mr. Heckscher and myself. The directors then proceeded to elect Mr. Gayley, president and Mr. Walter S. Reed secretary-treasurer.

Q. How soon after you qualified as a director did you open negotiations to sell the Nome Holding Company's property to the Alaska Mines Corporation?

A. I should think inside of a month.

Q. Isn't it a fact that the terms of the sale were already all arranged between you and Mr. Crane before the Alaska Mines Corporation was organized?

A. No, we had not got that far to talk detail.

Q. Hadn't you about concluded your negotiations?

A. No; there were two or three propositions up, any one of which we were willing to talk on.

Q. Who was present representing the Nome Holding Company in the negotiation?

A. I was representing the Nome Holding Company in the negotiation. [94]

(Deposition of E. E. Powell.)

(Witness continuing:) I don't know as I could define to you just my capacity but I was there trying my best to put a deal through with this company to make a deal, if I could.

Q. And at the time you were trying to put a deal through, you were the general manager and principal stockholder of the Nome Holding Company?

A. Yes, sir.

Q. Also a director of the Alaska Mines Corporation? A. Yes, sir.

Q. At that time Mr. Newton, Mr. Eisenlohr and Mr. Crane were also directors of the Alaska Mines Corporation? A. Yes, sir.

Q. Now, you consummated a deal sometime along in July or August, did you not? A. Yes, sir.

(Witness continuing:) In substance I agreed to transfer from the Nome Holding Company to the Alaska Mines Corporation all of the assets, real and personal, of the Nome Holding Company, subject however, to the mortgages for the issuance and delivery of 3,701,820 shares of the capital stock of the Alaska Mines Corporation, and for that consideration the Nome Holding Company executed its deeds and bills of sale to the assets,—to all of its assets. The 3,701,820 shares of the capital stock of the Alaska Mines Corporation was then issued and delivered to the Nome Holding Company, and the Nome Holding Company now owns 3,701,820 shares of the capital stock of the defendant Alaska Mines Corporation. That stock was never divided and issued to the respective stockholders of the Nome

(Deposition of E. E. Powell.)

Holding Company. There is no understanding that each shareholder of the Nome Holding Company shall have eighty shares of the capital stock of the Alaska Mines Corporation. It is worth eighty shares, sure it is. That is, each share of the Nome Holding Company stock is worth eighty shares of Alaska Mines Corporation stock.

Q. Does a shareholder of the Nome Holding Company have anything in writing, or otherwise, to show he is also a stockholder in the Alaska Mines Corporation? A. No, sir.

Q. Has he anything to show that he is entitled to eighty shares [95] of the Alaska Mines Corporation stock?

A. No, sir. No one has anything except stock of the Nome Holding Company.

Q. Is there any memorandum of agreement or writing of any kind or character between the Alaska Mines Corporation and the Nome Holding Company, to show who has the voting power of the 3,701,820 shares of the capital stock so delivered?

A. No, sir.

(Witness continuing:) There is no memorandum in writing between Mr. Eisenlohr, Mr. Newton, Mr. Crane and myself as to whom should have the voting power of the stock.

Q. Who has the voting power of the 3,701,820 shares? A. Why, the Nome Holding Company.

Q. The general manager of the Nome Holding Company you are speaking of?

A. No, the rights have never been exercised.

(Deposition of E. E. Powell.)

Q. At your annual meeting of the Alaska Mines Corporation held in 1917, who represented the Nome Holding Company, the 3,701,820 shares?

A. We had no meeting.

Q. You have never had a meeting yet?

A. No, sir.

Q. Who will represent it when they meet?

A. I have no idea.

Q. If I were a stockholder holding one share of stock in the Nome Holding Company would I have any right to appear and vote at the Alaska Mines Corporation annual meeting of the stockholders?

A. I should think not.

Q. The voting power is lodged in the control of the Nome Holding Company?

A. I think that would be the way. [96]

Q. Would its officials or somebody designated by it, be permitted to?

A. I should imagine so, I don't know, the matter has never come up.

Q. That wasn't part of the plan, was it, to lodge the voting power in the officials rather than the stockholders?

A. No, we have had no plan of that kind.

Q. The Alaska Mines Corporation is incorporated for ten million shares at a dollar per share?

A. Yes, sir.

Q. And 3,701,820 shares were issued to the Nome Holding Company? A. Yes, sir.

(Witness continuing:) I believe approximately that there have been about five million shares issued

(Deposition of E. E. Powell.)

all told. In my affidavit that I filed in this case I stated that about 600,000 additional shares have been issued in addition to the 3,701,820 shares given to the Nome Holding Company. I think that it is more than that. I think it is about five million but I am not sure of that. I would say four million and a half anyhow.

Q. Then there would be a little over a million shares additional to what the Nome Holding Company own? A. Yes, sir.

(Witness continuing:) The balance of the stock is treasury stock.

Q. Then there are five million shares of the capital stock of the Alaska Mines Corporation still unissued and in the treasury? A. Yes, sir.

(Witness continuing:) The same directors I named a while ago are still directors of the Alaska Mines Corporation. The seven that were named, there have been no changes since their election.

Mr. Theron I. Crane is a steel man of Philadelphia and New York. He was not interested financially in the Nome Consolidated Dredging Company, but he was interested as a stockholder and financially in the Nome Mining Company. He held some of the preferred stock of the Nome Mining Company. [97] He was a preferred stockholder of the Nome Mining Company, and the Nome Mining Company's preferred stockholders are also owners of Nome Holding Company stock. The 3,500 shares I mentioned are being used for buying that mortgage up, and Mr. Crane is to be one of those to receive stock.

(Deposition of E. E. Powell.)

I first met and got acquainted with Mr. Crane in the year 1906. I have talked with him many times since but I had nothing to do with him in connection with this property until 1916.

Q. And he was the principal financial incorporator, was he not, or organizer of the Alaska Mines Corporation?

A. He was the moving spirit up to the place of bringing in these people who came in with him.

Q. Who took the initiative of acting from there on?

A. I don't know as I am prepared to state. Mr. Crane was the man who got Mr. Gayley interested, also Mr. Reed and the others.

Q. When you foreclosed the Thatcher mortgage why didn't you make the Nome Mining Company party defendant?

A. Oh, I don't know a thing about why they didn't.

(Witness continuing:) The Nome Mining Company held a prior mortgage to the extent of \$100,000. I went ahead and foreclosed the Thatcher and Darling mortgages with an outstanding first mortgage of \$100,000 in favor of the Nome Mining Company on the property. I didn't make the Nome Mining Company a party. I intrusted that to my attorneys.

Q. Wasn't the purpose of it, and your attorneys agreed at that time you would not make the Nome Mining Company a party because it would delay the foreclosure proceedings?

A. I don't know anything about their reasons. I don't know that that was the case.

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(Witness continuing:) I don't know whether we discussed that or not.

Q. Now, in volume 173 there is a mortgage of the Nome Mining Company to the Bankers Trust Company of New York made on December 21st, 1907, for fifty thousand dollars that remains unsatisfied of record. [98]

A. Yes, sir, I know what that is; yes, sir.

(Witness continuing:) It is a mortgage given by the company for \$50,000 before but now paid. I believe that it is still unsatisfied of record.

Q. And it is a lien against the property that was transferred to the Alaska Mines Corporation?

A. I don't know as to that.

(Witness continuing:) I don't know why I didn't make the Bankers Trust Company a party to the Thatcher foreclosure. I don't know whether it was to prevent delay of the trial over the summer of 1915 or not. I had completely forgotten the mortgage.

Q. Now, Mr. Powell, will you please tell the court all the mortgages that you know of that exists against the assets of the Alaska Mines Corporation to date?

A. One of \$100,000 to Lawrence Darr, trustee, for the Nome Mining Company, and one of \$200,000 to myself as trustee for the Nome Holding Company bondholders,—note holders.

Q. And the \$50,000 one to the Bankers Trust Company that I just mentioned?

A. That is not a mortgage any more, that has been paid off.

Q. Now, in addition to that the Alaska Mines Cor-

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poration has given a mortgage to Mr. Greenberg for \$35,000, has it not?

A. That is on his own property.

Q. Well, it is on property claimed by them. Claimed by the Alaska Mines Corporation bought from Greenberg? A. Yes, sir.

(Witness continuing:) I don't know of any other mortgages. This Lawrence Darr mortgage was for \$100,000. I think that about all of it is paid. I believe that all of it is paid at this time.

Q. Did you personally pay it? A. No, sir.

Q. Who was going to pay it? [99]

A. Why, the stock as put up by the Nome Holding Company for the purpose of that mortgage and they paid it off.

Q. That is this 3,500 shares you left with Mr. Walter Reed? A. Yes, sir.

(Witness continuing:) The stock itself went to the stockholders of the Nome Mining Company. They were taking stock in the Nome Holding Company for their interest in the mortgage. Colonel Weatherly was one of those. The stockholders will have a right to cancel the mortgage. It is not a fact that the stockholders of the Nome Holding Company control a majority of the stock of the Nome Mining Company. I don't know how much stock Mr. Gayley, the president of the Alaska Mines Corporation, owns. He is one of the owners of the 600,000 shares mentioned in my affidavit. He has stock but I don't know how much.

Q. As much as 100,000 shares in the corporation?

(Deposition of E. E. Powell.)

A. I don't know.

Q. He was just brought into the company because he was a big steel man, engaged in the steel manufacturing business, was he not?

A. No, he is one of the stockholders of the company and a principal in the matter in some way, but I don't know how much he has.

(Witness continuing:) He is not a nominal stockholder. I don't know how much stock he has but I do know he is one of the principals and when it comes to talking business he dictates the policy largely.

Q. He owns less than 600,000 shares of the ten million shares, is that a fact?

A. Yes, sir, that is a fact.

Q. Now, the Nome Consolidated Dredging Company quit business in the fall of 1914, did it not, Mr. Powell? A. Yes, sir.

(Witness continuing:) The next year there wasn't any operations until after the foreclosure suits. After the foreclosure and after I bid the property in in 1915 I operated the property myself up till fall and then in 1916 the property was finally transferred to the Alaska Mines Corporation and since that time the [100] Alaska Mines Corporation has been preparing and getting ready to operate.

Q. And the Nome Consolidated Dredging Company went out of business and didn't continue in business after 1914? A. No, after 1914.

(Witness continuing:) The Nome Consolidated Dredging Company did not operate during the winter of 1914 or did not do any mining operations

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after the close of 1914.

Q. Now, in 1915 in the Thatcher, Darling foreclosure suits, all of the assets of the Nome Consolidated Dredging Company were included in that foreclosure, were they not, subject to that mortgage?

A. Yes, sir.

Q. And you bid in all of the assets?

A. Yes, sir.

Q. Has the Nome Consolidated Dredging Company any property anywhere that you know of?

A. It has not.

Q. And didn't have after that foreclosure?

A. No, sir.

Q. Either in Alaska or elsewhere?

A. No, sir.

Q. The Alaska Mines Corporation now has two dredges operating, hasn't it, at the present time?

A. Yes, sir.

(Witness continuing:) One on Bourbon Creek and one on Flat Creek, both mining under full swing, and using the power plant that was sold under the Thatcher foreclosure. The Alaska Mines Corporation is about to complete another dredge known as the Greenberg or Bessie Dredge on Holyoke Creek, and expects to operate that very soon. It is the same size as the other two dredges. It is the intention of the Alaska Mines Corporation to operate all three dredges and mine as rapidly as possible with them as soon as they can. They may not get to it this fall. It is the intention of the Alaska Mines Corporation to operate the remainder of this mining season with

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these two dredges that are now working. [101]

Q. And the Alaska Mines Corporation intends to appropriate and take all the gold dust and gold extracted and keep it? A. Yes, sir.

Q. And it doesn't recognize the Nome Consolidated Dredging Company as having any interest whatever in the output of the claims or the output of the dredges? A. No, sir.

Q. Or the rentals of the power plant?

A. No, sir.

(Witness continuing:) Besides being a director of the Alaska Mines Corporation I have been delegated with special authority during the time I am up here to look after their affairs. I am on a salary of \$6,500.00 per year. It is an annual salary. I don't know what my title is. I am not sure whether I am on record as general manager of the Alaska Mines Corporation in Alaska or not.

Q. Well, you are, aren't you?

A. I am not so sure of it.

(Witness continuing:) I have not been acting as general manager of the Alaska Mines Corporation since its organization. I am not the general manager at the present time.

Q. How soon after the company was organized did you go on the pay-roll for \$6500.00 per annum?

A. In some three or four months.

(Witness continuing:) It was during the summer of 1916, during the year of organization. It was some considerable time after the transfer of the property from the Nome Holding Company to the

(Deposition of E. E. Powell.)

Alaska Mines Corporation. The transfer had nothing to do with the deal wherein I was to act as general manager under a salary of \$6500.00 per annum.

The Alaska Mines Corporation has an office at 71 Broadway, New York City. I made that my headquarters after they opened an office there, since May 1st. Prior to that time I was in Philadelphia. When I was in New York City I was in Mr. Crane's office.

Q. Now, as agent or general manager, or whatever you call yourself, for the Alaska Mines Corporation, you negotiated the [102] purchase of the Greenberg property, did you not?

A. No, sir, I did not.

(Witness continuing:) I helped to bring them together, helped to bring Mr. Greenberg and Mr. Gayley and Mr. Crane together, and they did the buying and selling. I talked with Mr. Greenberg a number of times.

Mr. Gayley and Mr. Crane and the other directors and officers of the Alaska Mines Corporation have never been in Alaska and they have no personal knowledge of the Greenberg property, nothing except what they found out from other parties.

Prior to the time that the Alaska Mines Corporation opened its office at 71 Broadway it had headquarters in Mr. Gayley's office.

Q. Now, Mr. Powell, the plaintiff in its complaint alleges that in 1914 and 1915 the plaintiff was litigating with the Nome Consolidated Dredging Company in the Court of Common Pleas in the City of Philadelphia, State of Pennsylvania. Did you per-

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sonally appear at the trial of that action?

A. I did.

(Witness continuing:) There was an attorney employed and he appeared at the trial. I had resigned as general manager of the Nome Consolidated Dredging Company at that time. I resigned along in the spring of 1915 in writing. It is in Philadelphia with Mr. Furst, the secretary.

There was a suit commenced in Philadelphia in 1914. I don't remember the date. I testified in that action. The Nome Consolidated Dredging Company was represented in that case by counsel. Mr. Furst, an attorney of Philadelphia, was the attorney for the Nome Consolidated Dredging Company in that action. He participated in the trial and I testified as a witness. The notes that were involved in that lawsuit were executed by the Nome Consolidated Dredging Company by me as general manager. I signed the name of the Nome Consolidated Dredging Company to the notes that were offered in evidence.

Q. Was Mr. Newton present at the trial?

A. He came in as a witness once.

Q. Did he testify as a witness in the case?

A. Yes, sir, he did.

(Witness continuing:) Mr. Newton is a hotel man living in Philadelphia, where the [103] trial occurred. Mr. Eisenlohr was not a witness and did not testify. He wasn't in Philadelphia at the time. I don't know whether he knew about the case or not. I did not discuss it with him.

(Deposition of E. E. Powell.)

Q. Was any discussion of the lawsuit that was pending there had in your Board of Director's meeting of the Nome Consolidated Dredging Company?

A. No, sir, it was not.

(Witness continuing:) Mr. Newton, Mr. Eisenlohr and myself were all directors of the Nome Consolidated Dredging Company. We were directors at the time the suit was pending. At the time I testified I was not, but at the time that the suit was instituted I think that I was. Mr. Newton, Mr. Eisenlohr and myself were all directors of the Nome Consolidated Dredging Company at the time the notes were signed and delivered.

Q. Now, Mr. Powell, I subpoenaed you to bring with you a certain agreement that was executed between you and Mr. Newton and Mr. Eisenlohr, Dr. Sloan, George D. Schofield and others in the fall of 1914 or spring of 1915. Did you bring that with you? A. I did, here it is.

(Whereupon the said paper was offered and received in evidence as "Plaintiff's Exhibit No. 1" to the deposition, said paper being in words and figures as follows, to wit:)

Plaintiff's Exhibit No. 1 to Deposition of E. E. Powell—Proposed Outline of Reorganization of Nome Consolidated Dredging Company.

"PLAINTIFF'S EXHIBIT NO. 1.

PROPOSED OUTLINE OF REORGANIZATION.

In case reorganization is undertaken of the Nome

(Deposition of E. E. Powell.)

Consolidated Dredging Company, and a new company to be formed, the following would be the proposed outline:

45% of the Capitalization to be donated to the new Company as Treasury stock, the balance to be divided as follows:

25% of the Capitalization to be given to E. E. Powell in lieu of the 27-1/3% now held by him.

15% to be given *pro rata* to those holding notes and bills or debts of the present Nome Consolidated Dredging Company;

15% to be placed at the disposal of E. E. Powell for the purpose of financing the new company.

The above outline is agreed to by the following holders of notes:

J. M. SLOAN.

E. E. POWELL.

GEO. D. SCHOFIELD.

E. L. WEBSTER.

LEWIS BREMER.

M. W. NEWTON.

LOUIS H. EISENLOHR." [104]

Q. That paper is not dated. Can you give me the approximate date when it was drawn up?

A. Why, the paper was typed in, I think, before we left Nome in the fall of 1914.

(Witness continuing:) It was signed by Mr. Schofield and myself, and the others signed in the spring of 1915.

Q. Now, was the Nome Holding Company that was organized in the fall of 1915, was its stock di-

(Deposition of E. E. Powell.)

vided up according to the percentages therein outlined in said paper?

A. No, it had nothing to do with this.

Q. I hand you herewith a page taken from the prospectus of the Alaska Mines Corporation. You have seen that prospectus before, haven't you?

A. I have.

Q. Just examine that page and tell me whether or not that correctly states the facts that is stated on that page, including the officers and directors of the Alaska Mines Corporation. A. I believe so.

Q. With their various occupations?

A. Yes, sir; I think so.

(Whereupon the said paper was offered and received in evidence as "Plaintiff's Exhibit No. 2" to the deposition, said paper being in words and figures as follows, to wit:

Plaintiff's Exhibit No. 2 to Deposition of E. E. Powell—Articles of Incorporation of Alaska Mines Corporation.

(PLAINTIFF'S EXHIBIT NO. 2.)

"ALASKA MINES CORPORATION.

Incorporated July, 1916, under the laws of the State of Virginia.

Capital Stock \$10,000,000.

Shares Issued 3,781,000 Treasury Stock 6,219,000

Par Value of Shares One Dollar, Fully Paid and

Non-Assessable. All Common Stock. [105]

OPERATING OFFICE AND MINES,

Nome, Alaska.

Eastern Office:

71 Broadway, New York.

Western Office:

324 New York Block, Seattle, Wash.

OFFICERS:

President,

James Gayley.

Vice-Presidents:

Theron I. Crane.

Henry B. Livingston.

Secretary-Treasurer:

Walter S. Reed.

DIRECTORS:

Theron I. Crane, Philadelphia.

Pilling & Crane, Iron and Steel,
Philadelphia.

Director Eastern Steel Company.

AUGUST HECKSCHER, New York,

Director N. J. Zine Company.

Director Nipissing Mines Company.

Director Stewart Sugar Company.

LOUIS H. EISENLOHR, Philadel-
phia,

Treasurer Eisenlohr Bros., Inc.,
Philadelphia.

James Gayley, New York, Ex-Vice-

President United States Steel Cor-
porations, Director American Insti-
tute of Mining Engineers.

HENRY B. LIVINGSTON, New
York,

Member N. Y. Stock Exchange

MAHLON W. NEWTON, Philadel-
phia,

Proprietor of Greene Hotel, Phila-
delphia.

ELLIS E. POWELL, Seattle.

EMPIRE TRUST COMPANY,

Transfer Agent,

Counsel:

BEEKMAN, MENKEN & GRIS-

COM, 52 William St., New York.

FRANKLIN TRUST COMPANY,

Registrar.

CONSULTING ENGINEER,

F. H. MINARD,

New York."

Q. Mr. Powell, at the time you bid in the assets of the Nome Consolidated Dredging Company in the Thatcher foreclosure who was president of the Nome Consolidated Dredging Company?

A. Mr. M. W. Newton.

Q. And who was secretary?

A. Mr. W. F. Furst.

(Deposition of E. E. Powell.)

Q. And they were the last officials of the corporation, were they? A. Yes, sir, I think so.

(Witness continuing:) There have never been any successors elected up to the present time to my knowledge. I have had nothing to do with it for a long while. They were the officials of the Nome Consolidated Dredging Company during the year of redemption I think. I never heard of any successors being elected to succeed them. Mr. Newton was president of the Nome Consolidated Dredging Company at the time the mortgage was given in September, 1914. Mr. Eisenlohr, Mr. Webster and myself [106] were directors at that time. I was also the general manager. I executed the mortgages as general manager and vice-president. There were no changes in the directors of the Nome Consolidated Dredging Company subsequent to 1914 to my knowledge except myself, and I don't know whether any successor was elected to succeed me or not. I never heard of any if there was; I haven't tried to hear. So far as I know in 1915 and 1916 during the period of redemption the same directors and officers were holding their respective positions that they had at the time the mortgage was given.

Q. Just in order to get it clear into the record, who were the directors of the Nome Consolidated Dredging Company at the time that the Thatcher and Darling mortgages were voted to be given?

A. Mr. M. W. Newton, Louis H. Eisenlohr, Lewis Bremer, E. L. Webster and E. E. Powell.

(Deposition of E. E. Powell.)

(Witness continuing:) Mr. Newton was one of the creditors covered by the mortgages; so also were Mr. Eisenlohr, Mr. Webster and myself. Mr. Webster was one of the parties who became interested in the Thatcher mortgage for \$25,000 subsequent to the issuing of the mortgage notes. He handed me \$2,000 cash in the spring of 1914, and he held notes under the Thatcher mortgage. There was an existing debt due him at the time the Thatcher mortgage was made. The intention in the fall of 1914 was to include it all in one mortgage but Mr. Thatcher refused to join the bank's indebtedness with the remainder of the creditors. That is the reason two mortgages were made.

(Signed) E. E. POWELL."

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 6, 1917.
G. A. Adams, Clerk.

PLAINTIFF RESTED.

Whereupon the defendant, Alaska Mines Corporation, offered the separate answer of the said Alaska Mines Corporation to plaintiff's complaint, which said answer had been theretofore filed by said defendant, and the same was read and received in evidence, being in words and figures as follows, to wit:

(Title of Court and Cause.)

Separate Answer of Alaska Mines Corporation.

Comes now the Alaska Mines Corporation, a corporation, one of the defendants herein named, and

for its separate answer [107] to the alleged cause of action in the complaint herein contained, admits, denies and alleges as follows:

I.

It admits the allegations of paragraph I of said complaint, except as follows: It denies that said defendant, Nome Consolidated Dredging Company, a corporation, was at or for some time prior to the commencement of this action, or at any time since, doing business in the Territory of Alaska; it denies that E. E. Powell was at or for more than one year prior to the commencement of this action, or at any time since, vice-president, general manager or any other officer of said defendant, Nome Consolidated Dredging Company; it denies that said E. E. Powell was or is the treasurer or principal stockholder of the defendant, Alaska Dredging Company, as alleged in said paragraph; it denies that either of said defendants M. W. Newton, E. L. Webster or Louis Eisenlohr, was at any of said times a principal stockholder of said defendant, Nome Consolidated Dredging Company, as therein alleged; it denies that said defendant, George D. Schofield, was general counsel or attorney of either of the defendants referred to in said paragraph, prior to the year 1912, or subsequent to the year 1915.

II.

It denies each and every allegation, matter, statement and thing contained in paragraph II of said complaint, save and except that it denies any knowledge or information thereof sufficient to form a belief as to whether or not an action was pending in the

Court of Common Pleas for the city and county of Philadelphia, State of Pennsylvania, at the time or entitled as alleged in said paragraph II, or otherwise, or as to whether or not any judgment was ever recovered in any such alleged action. [108]

III.

Answering the allegations of paragraph III of said complaint, this defendant admits that on the 14th day of September, 1914, said Nome Consolidated Dredging Company, by and through said E. E. Powell, then its vice-president, made, executed and delivered to said F. H. Thatcher, trustee, a certain trust deed or mortgage, thereby conveying to said F. H. Thatcher, certain real and personal property of said mortgagor, to secure an issue of promissory notes aggregating the sum of Twenty-five Thousand Dollars (\$25,000); that said notes consisted of a series of thirty-seven (37) notes, numbered consecutively; that said notes were delivered to the respective persons or parties therein stated, except the Sloan note which was delivered to one J. W. Olford.

It expressly denies that said notes, or any of them, were delivered to or held by said E. E. Powell, as or for the purpose or purposes alleged or referred to in said paragraph or said complaint, or otherwise, except that it admits and alleges that all of said notes, long after the execution and delivery thereof and of said mortgage and after default in the terms thereof, were delivered to said E. E. Powell as trustee, for the respective owners and holders of said notes, for the sole purpose of procuring a foreclosure of said mortgage securing said notes and the sale

under such foreclosure of the premises and property described in and mortgaged by said trust deed or mortgage. It expressly denies that said defendant, Nome Consolidated Dredging Company, acting by or through said E. E. Powell, or otherwise, ever paid said Alaska Banking & Safe Deposit Company, or any owner or holder of either of said promissory notes any money, sum or amount whatsoever, on account thereof [109] or of the indebtedness evidenced by said promissory notes or secured by said mortgage, either as alleged in said paragraph or complaint, or otherwise; and it denies that the said indebtedness to said bank, as evidenced by either or all of said notes or secured by said mortgage was at the time of the foreclosure of said mortgage paid in whole or in part; but it admits that prior to such foreclosure said notes so owned and held by said bank were sold by it, for value, and were delivered to and held by said E. E. Powell, as trustee for the purchaser or purchasers thereof, and said bank had no interest in said notes at the time of such foreclosure proceedings.

Further answering the allegations contained in said paragraph III, this defendant admits that on the 16th day of September, 1914, said Nome Consolidated Dredging Company, acting by and through said E. E. Powell, as its vice-president, made, executed and delivered to one, J. M. Sloan, as trustee, its certain other trust deed or mortgage, conveying and mortgaging certain of the real and personal property of the said mortgagor to said J. M. Sloan, as trustee, as security for the payment of a series of

seventy (70) promissory notes numbered consecutively from one (1) to seventy (70); but this defendant expressly denies that said last-mentioned mortgage or trust deed, or the notes so issued and secured thereby, were made, executed, or delivered with any intent to hinder, delay or defraud the creditors of said Nome Consolidated Dredging Company, or the plaintiff herein.

It admits the delivery of said four notes, numbered 1, 34, 64 and 65 to the defendant, Louis Eisenlohr, and of said fourteen notes, numbered 36, 37, 38, 39, 40, 49, 50, 58, 59, 60, 61, 62 and 63 to the defendant, M. W. Newton, and the delivery of the remainder of said series of [110] promissory notes to said defendant, Alaska Dredging Company.

It expressly denies that said notes were not delivered as aforesaid, or that the same, or either of them, was spurious or worthless, or that the same were kept in the possession of said E. E. Powell, for the purpose of defrauding the plaintiff herein, or any person, firm, or corporation, or in pursuance to or in furtherance of any plan, scheme, or conspiracy to defraud, as alleged in said paragraph or complaint or otherwise.

Except as herein expressly admitted or otherwise denied, this defendant denies each and every allegation, matter, statement and thing contained in said paragraph III.

IV.

This defendant denies each and every allegation, matter, statement and thing contained in paragraph IV of said complaint.

V.

It denies each and every allegation, matter and statement contained in paragraph V of said complaint.

VI.

Answering paragraph VI of said complaint this defendant admits the commencement of said suit in this court, being said cause Number 2608, referred to, entitled as alleged, for the purpose of foreclosing said so-called Thatcher mortgage; it denies that said suit was brought pursuant to any plan or scheme mentioned or referred to in said paragraph or complaint, and denies that said Powell employed an attorney to appear for or represent said Nome Consolidated Dredging Company, as defendant in said cause. It admits that said C. E. Darling had theretofore been substituted for said J. M. Sloan, as trustee, in said so-called Sloan mortgage; [111] that said E. E. Powell, then holding all the notes secured by said Sloan mortgage, but solely as trustee for the respective owners thereof, employed an attorney to represent said C. E. Darling in said cause, and that such attorney appeared and filed a cross-complaint and answer for said Darling, as trustee, in said suit. It admits that said cause came on for trial on July 1st, 1915, seven days after the same was commenced, and that a decree of foreclosure was duly entered in said cause, a copy of which decree is annexed to said complaint, and marked Exhibit "A."

This defendant admits that the property described in and covered by said mortgages was sold on exe-

cution by the United States Marshal for the Second Division of the Territory of Alaska, pursuant to said decree of foreclosure, and that said E. E. Powell bid in and purchased all of the personal property so sold for the sum of \$20,000.00 and all the real property so sold for the sum of \$3,000, as shown by said marshal's return, a copy of which is annexed to said complaint, marked Exhibit "B." It admits that said E. E. Powell so bid in and purchased said real and personal property for the use and benefit of and as trustee for himself and the owners of the promissory notes secured by said two mortgages, all as set forth in said decree of foreclosure.

This defendant expressly denies that said action was commenced or prosecuted, or that any step or proceeding was had or taken therein or that said judgment was procured, or entered, or said sale made with any intent or purpose on the part of said E. E. Powell, or any party to or interested in said cause, or any party to this cause, or any other party whomsoever, to hinder, delay or defraud plaintiff herein, or any stockholder or creditor of said Nome Consolidated Dredging Company, or any other person, firm or corporation whomsoever; [112] and it denies that either of said promissory notes referred to was spurious or worthless or without full consideration therefor, and defendant expressly denies each and every allegation, statement or inference of fraud or fraudulent or wrongful purpose, scheme, plan or intent contained in said paragraph VI, or elsewhere in said complaint, and further, except as in this paragraph expressly admitted or denied, this

defendant denies each and every allegation, matter, statement and thing therein contained.

VII.

This defendant denies each and every allegation, matter, statement and thing contained in paragraph VII of said complaint, save and except that it admits that long prior to the commencement of this action, it became and ever since has been the sole and exclusive owner of the property, real and personal, so sold under execution sale under foreclosure of said two mortgages; that it is now in the sole and exclusive possession thereof, and claims such ownership and right of possession as a *bona fide* purchaser for value thereof.

VIII.

Answering the allegations of paragraph VIII of said complaint, this defendant admits that said E. E. Powell, as trustee, immediately after the execution sale referred to, took possession of all the property so sold, and that he refused to recognize the Nome Consolidated Dredging Company, as the owner of any of said property thereafter, except the right of the said Nome Consolidated Dredging Company to redeem the said sale of said real property as provided by law; it admits that this defendant in August, 1916, became the owner of all of said real and personal property, none thereof having been redeemed from such sale, and that it is conducting mining operations upon certain of said mining claims; and that [113] such claims are valuable only for the gold therein contained, and will be rendered worthless when such gold is mined therefrom;

but it denies that it has extracted any considerable part of the gold from said mining claims.

It admits that it is using the machinery and equipment purchased by it, which was sold at said execution sale, but it denies that the same is being worn or depreciated or will be rendered valueless; but on the contrary alleges that it has spent, and intends to and will spend large sums of money, far in excess of plaintiff's alleged claim, in repairing said machinery and equipment and putting the same in first class workable condition, and maintaining the same in such condition, in purchasing new machinery and equipment for use in connection therewith and upon said mining claims and in the purchase of other mining claims. This defendant admits that it claims to be the owner of the property set forth in said decree of foreclosure, and refuses to recognize any right, title or interest therein in the said Nome Consolidated Dredging Company, but it expressly denies that it has ever threatened or intended to sell the same, but, on the contrary, it intends to and has actually added thereto and to the value thereof many times the amount of plaintiff's alleged claim.

Except as herein expressly admitted, or denied, this defendant denies each and every allegation, matter, statement and thing contained in said paragraph VIII.

IX.

It denies each and every allegation, matter, statement and thing contained in paragraph IX of said complaint.

Further answering said complaint and as an af-

firmative defense to the alleged cause of action therein contained this defendant alleges: [114]

I.

That it is a corporation organized, created and existing under and by virtue of the laws of the State of Virginia, with its principal office in the city of Richmond, in said State; and that its principal office and place of business is in the city of New York, State of New York. That it was so organized on the 9th day of June, 1916, but that none of the organizers of this defendant corporation was then or had ever been an officer, agent or employee of either of the other corporations, or an employee or business associate of either of the individual persons mentioned or referred to in the complaint herein. That the capital of the defendant is Ten Million Dollars (\$10,000,000), divided into ten million shares of the par value of One Dollar (\$1.00) per share.

II.

That after the sale of the real property mentioned and referred to in the complaint herein, by the United States Marshal of the Second Division of the Territory of Alaska, to said E. E. Powell, this court, by its order, duly made and entered in the foreclosure suit referred to in said complaint, and on, to wit, the 27th day of September, 1915, duly and regularly confirmed the said sale of said real property to said E. E. Powell; all as appears from the records and files in said cause number 2608 of the clerk of this court.

That on, to wit, the 24th day of July, 1915, the said United States Marshal, pursuant to law and the said

sale under execution of the personal property referred to in the complaint herein and Exhibit "B" thereto attached, duly made, executed and delivered to said E. E. Powell, his bill of sale, as such United States Marshal, of all of such [115] personal property, which bill of sale was thereafter, and on the 26th day of July, 1915, at 11:10 o'clock A. M., duly filed for record in the office of the United States Commissioner and ex-officio Recorder for the Cape Nome Recording District, in the Territory of Alaska, and the same was duly recorded in said office in Volume number 197 at pages 397, etc., of the records thereof, a copy of which said bill of sale with the recorder's endorsement thereon is hereunto annexed, marked Exhibit "A" and made a part hereof.

III.

That thereafter and on, to wit, the 28th day of September, 1916, and more than one year after the date of said sale under said execution on foreclosure of said real and personal property, and said confirmation thereof, said real property not having been redeemed from such sale, the said United States marshal duly made, executed, acknowledged and delivered to said E. E. Powell, his deed and conveyance as such marshal, of all of the said real property so sold under said execution on such foreclosure, which deed and conveyance was thereafter and on, to wit, the 30th day of September, 1916, at 2:15 o'clock P. M., filed for record in the office of said United States Commissioner, and was duly recorded in Volume 200 at pages 133, etc., of the

records thereof; a copy of which said deed, with the recorder's endorsement thereon is hereunto annexed, marked Exhibit "B" and made a part hereof.

IV.

That on, to wit, the 25th day of October, 1915, the said E. E. Powell duly made, executed and acknowledged, and delivered to the Nome Holding Company, a corporation duly organized, created and existing under and by virtue of the laws of the State of Washington, a deed and conveyance of all [116] of the said property, both real and personal, which had been so theretofore sold by said United States Marshal under said execution to said E. E. Powell, which deed and conveyance was thereafter and on, to wit, said 25th day of October, 1915, at 5:00 o'clock P. M. duly filed for record in the office of said United States Commissioner, and was duly recorded in Volume 197 at pages 476, etc., of the records thereof; a copy of which said deed and conveyance with the recorder's endorsement thereon is hereto annexed, marked Exhibit "C" and made a part hereof.

V.

This defendant further alleges that on the 15th day of August, 1916, the said Nome Holding Company, a corporation, then claiming to be the sole and lawful owner, and lawfully seized and in possession of all of the property, real and personal, and property rights mentioned and referred to in the complaint herein, and so mortgaged to said F. H. Thatcher, as trustee, and to J. M. Sloan, as trustee, and so sold on execution under foreclosure of said mortgages to said E. E. Powell, and so sold by him

to said Nome Holding Company, offered to sell, transfer and convey all of the said property, real and personal, and property rights to this defendant. That said Nome Holding Company was then in sole and exclusive possession of all of said property and was the sole record owner of all thereof as aforesaid, subject to two certain mortgages of record thereon, aggregating the sum of \$300,000.00. That thereupon, and on said 15th day of August, 1916, this defendant, relying upon the said claim of ownership of said property by said Nome Holding Company, and upon its said possession thereof and its record title thereto, purchased said property and all [117] thereof, both real and personal, and property rights, from said Nome Holding Company, and delivered to said Nome Holding Company therefor certificates for three million seven hundred and one thousand and eight hundred and twenty shares (3,701,820) fully paid, nonassessable shares of the capital stock of this defendant, of the par value of one dollar (\$1.00) per share. That said shares of stock actually and truly paid and delivered to said Nome Holding Company, were then worth and of the full fair value of the said property so purchased from said Nome Holding Company.

VI.

That thereupon and on said 15th day of August, 1916, the said Nome Holding Company, duly made, executed, acknowledged and delivered to this defendant its two certain deeds and conveyances, each dated on said day, wherein and whereby it deeded, transferred and conveyed unto this defendant, its

successors and assigns, all and singular the said property, real and personal, and property rights. That each of said deeds and conveyances was duly filed for record in the office of said United States Commissioner on the 5th day of September, 1916, at 4:00 o'clock P. M., and each thereof was duly recorded in volume 200 of the records thereof, one thereof being recorded on pages 113 and 114 of said volume, and the other on pages 114 and 115 thereof. That hereunto annexed, marked Exhibit "D" and made a part hereof is a true copy of one of said conveyances, with the recorder's endorsement thereon; that hereunto annexed marked Exhibit "E" and made a part hereof is a true copy of the other of said conveyances, with the recorder's endorsement thereon.

VII.

This defendant alleges that it so purchased all of said property, real and personal, and property rights, [118] in good faith, for a full and valuable consideration paid and delivered to said grantor, without any notice or knowledge, actual or constructive, of the said alleged and pretended claim or indebtedness of said plaintiff, or of any of the alleged acts, plans, schemes, purposes or intentions, either of the other defendants herein, or of any other person or corporation mentioned in said complaint, or of any other person or corporation which are alleged, mentioned or referred to in said complaint, to hinder, delay or defraud the plaintiff herein, or any creditor or stockholder of said Nome Consolidated Dredging Company, or any other person, firm

or corporation, and this defendant alleges that it is now, and ever since said August 15th, 1916, has been a *bona fide* purchaser of all of said property, for a valuable consideration, without notice or knowledge, actual or constructive, of any outstanding right to or lien upon the same, or any part thereof, of the plaintiff herein, or any other person, firm or corporation, save the two mortgages on said property referred to in said Exhibit "D," and without any purpose or intent on the part of this defendant to hinder, delay or defraud plaintiff herein, or any creditor or stockholder of said Nome Consolidated Dredging Company, or any person, firm or corporation whomsoever.

VIII.

This defendant further alleges that, in addition to the certificates for stock so issued and delivered by it to said Nome Holding Company, in payment for said property, and prior to the commencement of this suit, it sold for valuable considerations, and issued certificates for large amounts of its capital stock, to other persons and corporations, who were and are wholly ignorant of the plaintiff's [119] alleged claim, which certificates are now outstanding in the hands of *bona fide*, innocent purchasers thereof; such additional certificates exceeding in the aggregate six hundred thousand shares (600,000).

That it has also purchased other real and personal property, than that mentioned and referred to in the complaint herein, and that it is now engaged in mining operations at Nome, Alaska. That it is perfectly solvent, having assets of a fair value far

in excess of the plaintiff's alleged and pretended claim, and if said plaintiff should be held in this cause to be entitled to enforce any claim against any property of this defendant, it is perfectly able to pay the same, without the necessity of the appointment of any receiver by this court.

WHEREFORE, this defendant, having fully answered the said complaint, prays judgment that the plaintiff take nothing against it in this action, but that the *same dismissed* as to this defendant, with its costs and disbursements herein incurred.

O. D. COCHRAN,
LYONS & ORTON,
F. T. MERRITT,

Attorneys for Defendant, Alaska Mines Corporation.

United States of America,
Territory of Alaska,—ss.

H. S. Thompson, being first duly sworn, deposes and says:

That he is the auditor and assistant treasurer of the Alaska Mines Corporation, answering defendant in the [120] above-entitled action, and that he now resides in Nome; that he has read the above and foregoing answer and knows the contents thereof and believes the same to be true. That the reason why this verification is made by affiant is because none of the officers of the Alaska Mines Corporation reside, or have an office in the District of Alaska.

H. S. THOMPSON.

Subscribed and sworn to before me this 4th day of September, 1917.

[Seal]

O. D. COCHRAN,

Notary Public, Territory of Alaska.

My commission expires Aug. 4, 1919.

Exhibit "A" to Separate Answer of Alaska Mines Corporation.

#62092.

MARSHAL'S BILL OF SALE.

KNOW ALL MEN BY THESE PRESENTS, That I, E. R. JORDAN, United States marshal in and for the Second Division, District of Alaska, by virtue of my office and by virtue of a public sale, duly advertised and had according to law on the 14th day of July, 1915, under a Special Writ of Execution and Order of Sale issued out of the District Court for the District of Alaska, Second Division, on the 2d day of July, 1915, in an action in said court entitled F. H. Thatcher, Trustee, E. E. Powell, Geo. D. Schofield, E. L. Webster, J. M. Sloan and E. E. Powell, Trustee, plaintiffs, and against Nome Consolidated Dredging Company, a corporation, and C. E. Darling, Trustee, defendants in cause No. 2608, at which sale E. E. Powell, one of the plaintiffs, was the successful bidder, and purchased all of the right, title, and interest of the said defendants in and to the personal property hereinafter specified and described, for the sum of twenty thousand (\$20,000) dollars, the receipt of which sum is hereby acknowledged [121] and credited upon the Judgment in the above-entitled

cause according to the terms of and in keeping with the Special Writ of Execution and Order of Sale above referred to; do now and by these presents herewith, in consideration of the premises herewith transfer, assign, and set over all of the right, title and interest of the above named (Ex. "A"—1) defendants in and to the following described personal property to E. E. Powell, one of the plaintiffs in the above-entitled action, he already having been given full and free possession of said personal property on the day of said sale:

1, Heater; 2, Counters situated on the 1st floor in building located on Lots 28, 29, and 30, in Block 16 of the Town of Nome; 1 Standing Desk; 1 L & H Filing Case, 5 sections; 1 Book Rack (for Ledgers); 1 Rug, 2½x5'; 2 High Stools; 1 Office Counter; 1 Protectograph; 1 Y & E Perforator; 2 Three Tier Wire Desk Baskets; 1 Automatic Pencil Sharpener; 1 Roll Top Desk; 1 Short Standing Desk; 1 Typewriter Desk; 1 Garland Heater and Stove Mat; 1 Enclosed Balance & Weights; 1 Card Case; 1 14" Underwood Typewriter; 1 Show & Walker Filing Case, 5 sections; 2 Cane Seat Arm Chairs; 1 Large Roll Top Desk; 3 Swivel Chairs; Desk Light; 1 Office Rug, 9x12; 1 Troemner Gold Balance & Weights; 1 Stand for Balance; 1 Columbia Dictaphone (complete); 1 Dictaphone Shaving Machine; 1 Dictionary Holder; 16 ¾ Diamond Point Chisels; 4 ¾x5 Diamond Point Chisels; 33 ⅞ Cold Chisels; 18 Bal Pein Hammers; 8 6" Stillson Wrenches; 7 8" Stillson Wrenches; 11 14" Stillson Wrenches;

8 8" Monkey Wrenches; 10 12" Monkey Wrenches; 23 14" Flat Bast Files; 40 14" Half Round Bast Files; 42 14" Round Bast Files;

All of the above situated on the 2nd floor in building located on lots 28, 29 and 30 in block 16 of the [122] Town of Nome.

Linoleum on floors; 1 Rug; *L* small table; 2 Drawer Dresser; 1 *Mirror* and Hat (Ex. "A"—2) Rack; 1 large Rug on floor; Several Rockers; 2 Morris Chairs; 1 Book Case; 1 Secretary; 1 Screen; 1 Couch complete with mattress; 1 Dining Table; 2 Chairs; 1 Sewing Machine; 1 Side Board; 1 Carpet Sweeper; 1 Rug on floor; 1 stove (cookstove); Dishes and crockery for 6 persons; 2 small tables; 1 wash stand; 1 *mirror*; 1 large hard coal heater with mat; 1 single bed, complete; 1 small iron bed with mattress; 1 dresser; 1 rocker; Straw matting; carpet sweeper; 1 dresser; 1 full iron bed complete; 1 small table; blankets and pillows.

All of the above in building situated on Lot #40 Block #30 in the Town of Nome.

1 Cascade Stove; 1 table; 1 sink; 1 wash bowl; oil cloth on floor; 1 Wilton chair; 1 Steamer chair; 1 wash stand; 1 table; 1 rug on floor; 1 chiffonier; 1 couch; 1 rug on floor (old); 1 dress box; 1 rug on downstairs bedroom (old); 1 new rug; several rocking chairs; 1 hor blast heater;

All of the above in building situated on Lot #10 and #11 in Block #91, of the Town of Nome.

1 Power Plant, Westinghouse Equipment, for generating 650 K. W. Turbine driven, Babcock Wil-

cox Boilers, 3 units 150 H. P. each; Auxiliary Equipment complete.

1, 5,000 barrel steel tank, with $\frac{3}{4}$ mile of 4" pipe and $2\frac{1}{2}$ miles of 2" pipe;

$\frac{1}{4}$ mile Narrow *Guege* Railroad; 2 Wood frames; corrugated iron warehouses; 1 Wood constructed warehouse; 1 Wood Construction Warehouse and shop; 1 Wood construction warehouse and repair house; 1 Wood construction Mess House; 3 Wood construction Bunk Houses; [123]

Miscellaneous supplies used in (Ex. "A"—3) connection with dredging operations; spare parts, heating and thawing plants.

2 Automobiles; all assaying and refining supplies, tools and utensils; 1 Keystone Drill; 1 Seven Cubic Feet connected bucket, Bucyrus Type Dredge; also all cables and appurtenances, thereunto belonging; 1 Transmission line from Power Plant on Bourbon Creek to dredge on Bourbon Creek;

All of the above situated on Bourbon Creek in the Cape Nome Recording Precinct, District of Alaska.

1 Transmission Line from Power Plant on Bourbon Creek to dredge on Wonder Creek; 1 Seven Cubic feet open connected bucket, Bucyrus Type Dredge, all cables and appurtenances thereunto belonging; 1 Mess House and furniture and fixtures therein; 2 Cabins; 2 Keystone Drills;

All of the above situated on Wonder Creek in the Cape Nome Recording Precinct, District of Alaska.

Also all Miscellaneous supplies used in connection

with dredging operations; spare parts, heating and thawing plants.

1 unfinished Dredge, situate on No. 2 Below on Wonder Creek in the Cape Nome Recording Precinct, Dist. of Alaska.

2 100 H. P. Boilers, situated on No. 13 Below on Dry Creek, in the Cape Nome Recording Precinct, District of Alaska.

Also all engines, boilers and piping situated in Company's warehouses and on the property, together with all mining appliances and other personal property of every name, nature and description, situated in the Cape Nome Recording Precinct, District of Alaska.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 24th day of July, 1915. [124]

E. R. JORDAN,

United States Marshal, Second Division, District of Alaska.

By A. B. Miller,

Chief Deputy.

Recorded July 26, 1915, 11:10 A. M., at request of E. E. Powell.

JAMES FRAWLEY,

Recorder.

(Ex. "A"—5) Recorded, Vol. 179, Page 397.

Exhibit "B" to Separate Answer of Alaska Mines Corporation.

#64371.

Form No. 159.

UNITED STATES MARSHAL'S DEED.

THIS INDENTURE made and entured into this 28th day of September, in the year of our Lord 1916, between E. R. JORDAN, United States Marshal for the 2d Division, District of Alaska, by virtue of his office of the first part, and E. E. POWELL, of Nome, Alaska, of the second part;

WITNESSETH: That, whereas, at a regular term of the District Court of the United States, held in and for said District on the first day of July, in the year A. D. 1915, F. H. Thatcher, Trustee, E. E. Powell, Geo. D. Schofield et al., Plaintiffs, recovered a judgment against Nome Consolidated Dredging Company, et al., Defendants in a certain plea for the sum of \$26,420.56 and \$379.10 costs of suit; and whereas, on the second day of July, A. D. 1915, a Writ of Special Execution issued from said District Court for the Collection of said judgment, and said Writ was directed to said E. R. Jordan, United States Marshal as aforesaid, and that said writ was levied by the said United States Marshal by virtue of his office, and according to the statute in such [125] case made and provided, on the third day of July, A. D. 1915, upon a certain *tracts* or *parcels* of land, hereinafter described, and which said lands were advertised for sale by said United States Marshal ac-

according to law, and afterwards, to wit, on the second day of August, A. D. 1915, in pursuance of said advertisement, the United States Marshal exposed said lands to public sale at Nome, Alaska, (Ex. "B"—1) and E. E. Powell bid the sum of Three thousand and 00/100 (\$3,000.-00) Dollars therefor, which being the highest and best bid, the said land and premises were struck off and sold to him, the said E. E. Powell and the said E. E. Powell and his assigns became entitled to a Deed for the said premises from the said United States Marshal because the said premises were not redeemed according to law.

NOW, THEREFORE, I, E. R. JORDAN, United States Marshal of said District, by virtue of my office, and by force of the statute in such case made and provided, for and in consideration of three thousand (\$3,000) dollars in hand paid to me by the said E. E. Powell, according to the terms of said Writ, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said E. E. Powell, all the right, title, interest, and claim which the said Nome Consolidated Dredging Company, a corporation and C. E. Darling, Trustee, Defendants on the days of sale aforesaid, had in and to the following-described tracts or parcels of land, to wit: Placer mining claims and other real property known as Carnation Group, situated on Wonder Creek; Bonanza Association Claim, situated at the east side of the City of Nome, townsite; Anderson Claim situated on the West side of Bonanza Claim; one-half interest in No. 4 Bench, Left Limit, of No. 4

Below on Dry Creek; also five [126] hundred and forty-two acres, against which is still owing approximately twenty-six thousand dollars, falling due this year (1915) and next (1916), known as the "Bell" Claim, a bench off the right limit of No. 2 Flat Creek; No. 1 Above on Wonder Creek; Four Claims, Jewel, Gold Dust, Lucky Two, No. 2 Claim (Ex. "B"—2) and Juanita, situated off the Left Limit of No. 13 Below on Dry Creek; Moonlight claim, situated second tier of benches off No. 10 Below on Dry Creek; Combination Claim, situated off No. 4 and No. 5 Below right limit Dry Creek; Johnson Group, one-half interest in three claims situated on the left limit of No. 2 Above on Dry Creek, and described as Tibbets, Convex, and Concave Claim; big 5 Claim, situated second tier benches off Nos. 11 and 12 Below on Dry Creek. The Milton and Dover Association Claims at the mouth of Little Creek; No. 5 Peluck and No. 2 Tundra, North of the Milk Ranch, east of Nome; Sheldon No. 2 off No. 2 below on Wonder, L. L. Also approximately 521 acres held under twenty-year lease and option from the Anvil Hydraulic and Drainage Company, owners, operated under lease with contract providing deed shall pass to operating company when royalty equals purchase price. This is a nearly contiguous piece of property lying along the two beds of Bourbon Creek, East Bourbon Creek, Holyoke Creek, Saturday Creek and Lake Creek, as shown by one certain contract and lease recorded in Nome Recording District, District of Alaska. Also $52\frac{1}{2}$ acres held under lease and option

for 20 years, property owned by the Alaska Dredging Company, situated on Wonder Creek and a contiguous piece of property. Two lots and building; lots 10 and 11, block 91; one lot and building; lot 40, block 30, situated in the Town of Nome. One office building and lots known as [127] 28, 29 and 30 in block 16, situated in the Town of Nome. Six miles of ditches leading from headwaters of Dry Creek to the southern line of the property, adjoining the City of Nome, all in Cape Nome (Ex. "B"—3) Recording Precinct, 2d Division, Territory of Alaska.

TO HAVE AND TO HOLD the said tracts or parcels of land together with the appurtenances thereunto belonging, unto the said E. E. Powell and his heirs and assigns forever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 28th day of September, in the year of our Lord one thousand nine hundred and sixteen.

E. R. JORDAN, (Seal)

United States Marshal for the 2d Div. District of Alaska.

United States of America,
2d Div. District of Alaska.

I, G. A. Adams, Clerk of the District Court of the United States for the 2d Division, District of Alaska, do hereby certify that E. R. Jordan, United States Marshal for the said 2d Div. District of Alaska, who is to me known to be the person named in and who executed the foregoing deed of conveyance this day

personally appeared before me and acknowledged that he executed the same as said United States Marshal, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court at the City of Nome, in said District, this 28th day of September, in the year of our Lord one thousand nine hundred and sixteen.

(Court Seal)

G. A. ADAMS,
Clerk.

(Ex. "B"—4) Recorded September 30, 1916, 2:15
P. M. at request [128] of O. D.
Cochran.

JAMES FRAWLEY,
Recorder.

(Ex. "B"—5) Recorded Vol. 200, Page 133.

**Exhibit "C" to Separate Answer of Alaska Mines
Corporation.**

#62609.

THIS INDENTURE, Made this 25th day of October, 1915, between E. E. POWELL, of Nome, Alaska, Party of the first Part, and the NOME HOLDING COMPANY, a corporation organized under the laws of the State of Washington, Party of the Second Part.

THAT WHEREAS, the party of the first part heretofore and on the 14th day of July, 1915, at Nome, Alaska, purchased from the United States Marshal for the Second Division in the Territory of Alaska, at a sale regularly made by said marshal under and pursuant to a writ of execution issued out of the

District Court for the Territory of Alaska, in the Second Division, in a cause entitled, F. H. Thatcher, Trustee, E. E. Powell, Geo. D. Schofield, E. L. Wesbter, J. M. Sloan, and E. E. Powell, Trustee, Plaintiffs, vs. Nome Consolidated Dredging Company, a Corporation, and C. E. Darling, Trustee, Defendants, said cause being numbered in said court 2608, certain personal property belonging to said defendant, Nome Consolidated Dredging Company, and

WHEREAS, the party of the first part did purchase from the United States marshal at a sale regularly made by said marshal, under and pursuant to said writ of execution, issued out of said court in said cause, certain real property hereinafter particularly described, now, [129]

THEREFORE, the said party of the first part for and in consideration of the sum of ten dollars (\$10.00) lawful money of the United (Ex. "C"—1) States of America, to him in hand paid, the receipt whereof is hereby acknowledged, does by these presents, grant, bargain, sell, convey, confirm and quit-claim unto the said Second Party, its successors and assigns, all of the right, title and interest acquired by the said party of the first part in and to said real and personal property under and by virtue of said sales made by the said United States marshal for the Second Division, for the Territory of Alaska as aforesaid, said real and personal property being situated in the Cape Nome Mining and Recording District and Precinct,

in the Territory of Alaska, and being particularly described as follows, to wit:

PERSONAL PROPERTY:

All of the office furniture located in the upper part of the building located on lots 28, 29 and 30, in Block 16 of the town of Nome, but not including the personal furniture in the 3 east rooms, off office.

All of the furniture and fixtures located in the lower part of the building situated on lots 28, 29 and 30, Block 16 in the town of Nome.

All of the furniture and fixtures located in the house situated on lot No. 40, Block No. 30, in the town of Nome.

All the furniture and fixtures located in the house situated on lots No. 10 and 11, Block 91 in the town of Nome.

One Power Plant, Westinghouse equipment for generating 650 K. W. Turbine Drive Babcock-Wilcox Boilers, 3 units, 150 H. P. each, Auxiliary equipment complete.

One 5,000 barrel steel tank with $\frac{3}{4}$ mile of 4" pipe-line and $2\frac{1}{2}$ miles of 2" pipe-line.

One-half mile narrow *guage* railroad.

Two wood frame, corrugated iron warehouses.

One wood construction warehouse.

One wood construction warehouse and shop.

One wood construction warehouse and repair shop.

One Wood construction Mess House.

Three Wood Construction Bunk Houses.

Miscellaneous supplies used in connection with dredging, spare part, heating and thawing plants.

1 Automobile Truck.

All assaying and refining supplies, tools, and utensils.

(Ex. "C"—2) 1 Keystone Drill.

1 Unfinished Dredge known as No. 3

Dredge. [130]

2 100 H. P. Boilers.

1 Thawing plant, 2 70, H. P. Boilers, points, piping, etc.

1 Oil Tank.

Supplies, materials, and repair parts near Wonder Creek Dredge.

REAL ESTATE:

Carnation Group, situated on Wonder Creek.

Bonanza Association Claim situated at the east side of the City of Nome, excepting \$324.00 due, as shown under claim "final payment to be made."

Anderson Claim situated on the west side of Bonanza Claim.

One-half interest in No. 4 Bench left limit of No. 4 Below on Dry Creek.

Also five hundred and forty-two acres, against which is still owing approximately twenty-six thousand dollars, falling due this year and next.

No. 1 above on Wonder Creek.

Four claims, Jewel, Gold Dust, Lucky Two, No. 2 Claim and Juanita, situated off the left limit of No. 13 Below on Dry Creek.

Combination Claim situated off No. 4 and 5 Below right limit Dry Creek.

Johnson Group approximately one-half interest in three claims situated off the left limit of No. 2 Above

on Dry Creek, and described as Tibbets, Convex, and Concave, and also the Stockton Claim.

No. 5 Peluck, subject to a payment of \$400.00.

No. 2 Tundra Claim, north of the Milk Ranch, east end of Nome, subject to payment of \$1,000.00.

Sheldon No. 2 off No. 2 Below on Wonder Creek, subject to payment of \$600.00.

Two lots and buildings, lots 10 and 11, Block 91,

One lot and building, lot 40, Block 30, situated in the Town of Nome.

One office building and lots known as 28, 29 and 30, in Block 16, situated in the town of Nome.

Six miles of ditch leading from heatwaters of Dry Creek to the southern limits of the property, adjoining the City of Nome.

TOGETHER with all and sinbular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto the said party of the second part, and (Ex. "C"—3) to their heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year [131] first above written.

E. E. POWELL.

Signed, sealed and delivered in presence of:

F. SCHENCK.

E. L. SISK.

United States of America,
Territory of Alaska,—ss.

This is to certify that on this 25th day of October, 1915, before me, a Notary Public in and for the Territory of Alaska, appeared the foregoing named E. E. Powell, known to me to be the identical person described in, and who executed the within instrument, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein named.

IN WITNESS WHEREOF, I have hereunto affixed my notarial seal.

[Notarial Seal]

O. D. COCHRAN,

Notary Public, Territory of Alaska.

My commission expires Aug. 4, 1919.

(Revenue Stamp \$5.00.)

Recorded October 25, 1915, 5:00 P. M. at request of E. E. Powell.

JAMES FRAWLEY,

Recorder.

(Ex. "C"—4) Recorded Vol. 197, page 476.

**Exhibit "D" to Separate Answer of Alaska
Mines Corporation.**

#64248

KNOW ALL MEN BY THESE PRESENTS,
That NOME HOLDING CO., a corporation duly organized and existing under and pursuant to the laws of the State of Washington, party of the first part, for and in consideration of the [132] sum of one dollar (\$1.00) lawful money of the United States,

and other good and valuable considerations to it in hand paid, at or before the ensealing and delivery of these presents by ALASKA MINES CORPORATION, a corporation duly organized and existing under and pursuant to the laws of the Commonwealth of Virginia, party of the second part, the receipt whereof is hereby acknowledged, has bargained, sold, assigned, conveyed, set over and transferred, and by these presents does bargain, sell, assign, convey, set over and transfer to the party of the second part, its successors and assigns, all of the assets, both real and personal, business, good-will, machinery, tools, appliances, fixtures, merchandise, bills and notes receivable, accounts receivable, choses in action and the benefit of all pending contracts, leases and options belonging to the party of the first part, and either located, in, earned by or in any way pertaining or relating to the business of the party of the first part hereto.

TO HAVE AND TO HOLD the same unto the said party of the second part, its successors and assigns forever, to and for its own proper use and behoof; subject, however, to two certain mortgages now liens thereon, securing the aggregate principal sum of three hundred thousand dollars (\$300,000) and interest at the rate of not exceeding seven per centum (7%) per annum.

And the said party of the first part does hereby constitute and appoint the party of the second part its true and lawful attorney, irrevocable, in its place, name and stead, for the purposes aforesaid, to ask,

demand, sue for, attach, levy, recover and receive all sum or sums of money which now are or may hereafter become due and owing and [133] payable for and on account of any of the accounts, dues, debts, and demands above assigned, hereby giving and granting unto said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary, as fully to all intents and purposes as said party of the first part might or could do if personally present, with full power of substitution hereby ratifying and confirming all that said attorney, its substitute or substitutes, shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the party of the first part has caused these presents to be signed by its President and its corporate seal to be hereunto affixed, attested by its Secretary, in duplicate, the 15th day of August, one thousand nine hundred and sixteen.

NOME HOLDING CO.

By F. S. POWELL,
President.

Attest:

[Corporation Seal] J. D. TRENHOLME,
Secretary.

(Ex. "D"—2) (Revenue Stamp \$1.25.)

State of Washington,
County of —, —ss.

On this 15th day of Aug. A. D. 1916, before me, personally appeared F. S. Powell, to me known to

be the President of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my [134] hand and affixed my official seal the day and year first above written.

[Notarial Seal]

J. K. C. KELLOGG.

Recorded September 5, 1916, 4:00 P. M., at request of J. E. Powell.

JAMES FRAWLEY,

Recorder.

(Ex. "D"—3) Recorded Vol. 200, page 115.

Exhibit "E" to Separate Answer of Alaska Mines Corporation.

#64249.

THIS INDENTURE, made this 15th day of August, in the year one thousand nine hundred and sixteen, between NOME HOLDING CO., a corporation duly organized and existing under and pursuant to the laws of the State of Washington, party of the first part, and ALASKA MINES CORPORATION, a corporation duly organized and existing under and pursuant to the laws of the Commonwealth of Virginia, party of the second part,

WITNESSETH, That the said party of the first part, in consideration of the sum of one dollar

(\$1.00) lawful money of the United States, and other valuable considerations, paid by the said party of the second part, does hereby grant, release and quit-claim unto the said party of the second part, its successors and assigns forever, the following pieces or parcels of land in the Territory of Alaska, more particularly described as follows:

“CARNATION GROUP” situated on Wonder Creek.

“BONANZA ASSOCIATION CLAIM” situated at the east side of the City of Nome.

“ANDERSON CLAIM” situated on the west side of Bonanza Claim.

One-half interest in No. 4 Bench left limit of [135] No. 4 Below on Dry Creek.

Also five hundred and forty-two acres as follows:
No. 1 Above on Wonder Creek.

Four claims, Jewel, Gold Dust, Lucky Two, No. 2 claim and Juanita, situated off the left limit of No. 13 Below on Dry Creek.

Combination Claim situated off No. 4 and 5 Below right limit Dry Creek.

Johnson Group approximately one-half interest in three claims situated off the left limit of No. 2 Above on Dry Creek, and described as Tibbets, Convex, and Concave, and also the Stockton Claim.

No. 5 Peluck.

No. 2 Tundra Claim, north of the Milk Ranch, east end of Nome.

Sheldon No. 2 off No. 2 Below on Wonder Creek.

Two lots and buildings, lots 10 and 11, Block 91.

'One lot and building, lot 40, Block 30, situated in the Town of Nome.

One office building and lots known as 28, 29 and 30 in Block 16, situated in the Town of Nome.

Six miles of ditches leading from headwaters of Dry Creek to the southern limits of the property, adjoining the City of Nome.

Being the same premises conveyed by E. E. Powell to Nome Holding Co. (therein described as Nome Holding Company), by a certain indenture bearing date the 25th day of October, 1915, and filed for record on said date.

TOGETHER *will* all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder [136] and remainders, rents, issues and profits thereof.

(Ex. "E"—2) TO HAVE AND TO HOLD, the above-granted premises, together with the appurtenances, unto the said party of the second part, its successors and assigns forever.

IN WITNESS WHEREOF the party of the first part has caused these presents to be executed by its President and its corporate seal to be hereunto affixed, attested by its Secretary, the day and year first above written.

NOME HOLDING CO.

By F. S. POWELL,

President.

[Corporation Seal]

Attest: J. D. TRENHOLME,

Secretary.

State of Washington,
County of ———, —ss.

On this 15 day of Aug. A. D. 1916, before me personally appeared F. S. Powell, to me known to be the President of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Notarial Seal]

J. K. C. KELLOGG.

(Revenue Stamps \$25.00.)

Recorded September 5, 1916, 4:00 P. M. at request of J. E. Powell.

(Ex. "E"—3)

JAMES FRAWLEY,

Recorder.

Vol. 200, page 114.

Filed in the office of the District Court Clerk of Alaska, Second Division, at Nome. Sep. 4, 1917.
G. A. Adams, Clerk. [137]

Whereupon the court adjourned to 10 A. M. September 7th, 1917, and,

BE IT FURTHER REMEMBERED that upon the convening of court on September 7th, 1917, at 10 A. M., the Court regularly took up the matter of the hearing on the application of the plaintiff for

a receiver in the above-entitled action, and the defendant, Alaska Mines Corporation, thereupon offered in evidence the affidavit of E. E. Powell, which affidavit was read and received in evidence, being in words and figures as follows, to wit:

Affidavit of E. E. Powell—September 4, 1917.

(Title of Court and Cause.)

United States of America,

Territory of Alaska,—ss.

E. E. Powell, being first duly sworn, deposes and says:

That in the month of September, 1914, affiant was and had been for several years prior thereto manager of the Nome Consolidated Dredging Company.

That on the 14th day of September, 1914, the said Nome Consolidated Dredging Company was indebted to the Alaska Banking & Safe Deposit Company in the sum of \$5,889.66, which was long past due and was also indebted in large sums of money to divers other persons, firms and corporations. That on said 14th day of September, 1914, for the purpose of paying said indebtedness to said Alaska Banking & Safe Deposit Company, and also borrowing further moneys from said bank, affiant, having been theretofore duly authorized by the Board of Directors of said Nome Consolidated Dredging Company, made, executed and delivered to one F. H. Thatcher, trustee, a certain mortgage and trust deed referred to in the plaintiff's complaint herein as the "Thatcher Mortgage," [138] to secure a series of notes of the principal sum of \$25,000, bearing interest

from date, some at the rate of 12% per annum, some at the rate of 8% per annum, and some at the rate of 6% per annum; that said notes were in various denominations, and were on said 14th day of September, 1914, duly certified by said trustee; that the principal sum of said several notes and the respective payees thereof, were as follows:

Number. Payable to the order of: Principal sum.

1	Alaska Banking & Safe Deposit Co.	\$ 500.00
2	ditto	793.13
3	ditto	3500.00
4	ditto	1000.00
5	ditto	1000.00
6	ditto	444.83
7	Nome Consolidated Dredging Company	500.00
8	ditto	500.00
9	ditto	500.00
10	M. W. Newton	500.00
11	ditto	500.00
12	ditto	500.00
13	J. W. Olford	500.00
14	L. H. Eisenlohr	500.00
15	E. L. Webster	500.00
16	E. L. Webster	500.00
17	Nome Consolidated Dredging Co.	262.04
18	Alaska Banking & Safe Deposit Co.	2944.83
19	M. W. Newton	500.00
20	ditto	500.00
21	ditto	500.00
22	ditto	500.00
23	L. H. Eisenlohr	500.00

182 *American Manganese Steel Company*

24	E. L. Webster	500.00
25	ditto	500.00
26	Nome Consolidated Dredging Co.	500.00
27	ditto	500.00
28	ditto	500.00
29	ditto	500.00
30	ditto	500.00
31	ditto	500.00
32	ditto	500.00
33	ditto	500.00
34	ditto	500.00
35	ditto	500.00
36	ditto	500.00
37		555.17

That said note, numbered one, with the certificate of the trustee thereon, was in words and figures as follows, to wit:

“\$500.00. Nome, Alaska, Sept. 14, 1914.

On or before December 15, 1914, we promise to pay to the order of the Alaska Banking & Safe Deposit Company, Five Hundred Dollars, at the banking house of the Alaska Banking and Safe Deposit Company, Nome, Alaska, without defalcation, for value received, with interest from date at the rate of 12 per cent per annum, principal and interest payable only in United States Gold Coin.

This note is secured by a certain mortgage bearing date the 14th day of Sept., 1914, executed and delivered by Nome Consolidated Dredging Company, to F. H. Thatcher, as Trustee, and secured upon the property and rights in said mortgage described, which mortgage is to be recorded at Nome, Alaska, and to which reference is hereby made for a full

description of said property, and the terms and conditions upon which this note is issued.

NOME CONSOLIDATED DREDGING COMPANY.

By E. E. POWELL,

No. 1. Vice-president & General Manager.

I hereby certify that the above note is one of an authorized issue, aggregating Twenty-five Thousand Dollars (\$25,000) mentioned in a certain mortgage dated the 14th day of September, 1914, referred to therein.

F. H. THATCHER, Trustee." [140]

That all the other notes were similar in form, and a portion of said issue was due December 15th, 1914, and a portion December 15th, 1915.

That on the 15th day of September, 1914, the said Nome Consolidated Dredging Company borrowed from the Alaska Banking & Safe Deposit Company \$10,182.79, and then and there delivered to said bank, as evidence of said indebtedness, of the notes above mentioned, Numbers 1, 2, 3, 4, 5, 6 and 18.

That the said Nome Consolidated Dredging Company used of said sum so borrowed, the sum of \$5,-889.66, to take up two promissory notes of said Nome Consolidated Dredging Company, then held by said Alaska Banking & Safe Deposit Company, and the balance of said money was used by said Nome Consolidated Dredging Company, in the ordinary course of its business, to pay sundry creditors and expenses.

That note No. 7 of said series, originally made payable to the Nome Consolidated Dredging Com-

pany, was shortly thereafter duly endorsed by said Nome Consolidated Dredging Company, and delivered to the Darling & Dean Company, merchants of Nome, Alaska, in payment of a *bona fide* indebtedness due from said Nome Consolidated Dredging Company, to said Darling & Dean Company. That thereafter, and in the month of June, 1915, affiant personally purchased said note from said Darling & Dean Company, and thereafter continued to hold the same as his own personal property.

That note No. 8 of said series was shortly after its issuance endorsed by said Nome Consolidated Dredging Company, and delivered to one, Geo. D. Schofield, in part payment to him of a then existing *bona fide* indebtedness, and thereafter and in the month of November, 1914, affiant purchased said note from said Schofield, and has since continued to own the same. [141]

That note No. 9 of said series was, shortly after its issuance, endorsed by the Nome Consolidated Dredging Company, and delivered to one W. H. Webb, a merchant of the city of Nome, in part payment of then *bona fide* existing indebtedness due from said Nome Consolidated Dredging Company to W. H. Webb;

That notes Nos. 10, 11, 12, 19, 20, 21 and 22 of said series were made payable to M. W. Newton, a resident of the city of Philadelphia, Penn'a, and were thereafter delivered to him and are now owned by him, and said notes were so delivered to said Newton in part payment of then existing *bona fide* indebtedness of said Nome Consolidated Dredging Company

to said M. W. Newton, for money theretofore borrowed by said company from said Newton.

That note No. 13 of said series was made payable and issued and delivered to one J. W. Olford, of the city of New York, in payment of then existing *bona fide* indebtedness from said Nome Consolidated Dredging Company to said Olford, for money theretofore borrowed by said company from said Olford, and that said Olford is still the owner and holder of said note.

That notes Nos. 15, 16, 24 and 25 of said series, were issued and delivered to one E. L. Webster, in payment of *bona fide* and existing debts then due from said company to said E. L. Webster, for money theretofore borrowed by said company from said Webster; that said Webster is still the owner and holder of said notes.

That notes Nos. 17, 26, 27, 28, 34 and 37 of said series, originally made payable to the Nome Consolidated Dredging Company, were, within a few days after the same were issued, endorsed by said Nome Consolidated Dredging [142] Company, and delivered to the Associated Oil Company of California, in part payment of *bona fide* and existing indebtedness then due from said Nome Consolidated Dredging Company to said Associated Oil Company, for fuel oil theretofore delivered by said Associated Oil Company to said Nome Consolidated Dredging Company. That said notes were owned and held by said Associated Oil Company until the same were purchased by one Henry L. McCoy, of the city of Philadelphia, who has ever since continued to be

and now is the owner and holder thereof.

That note No. 23 of said series was issued and was payable to L. H. Eisenlohr, and delivered to him in part payment of then existing *bona fide* indebtedness of said Nome Consolidated Dredging Company to said L. H. Eisenlohr, for money theretofore borrowed by said company from said Eisenlohr.

That notes Nos. 29, 30 and 37 of said series were, shortly after the date of the issuance thereof, endorsed by said Nome Consolidated Dredging Company, and delivered to one Geo. D. Schofield, in payment of then existing *bona fide* indebtedness of said Nome Consolidated Dredging Company, to said Schofield, and said Schofield continued to hold said notes until some time in the month of October, 1915, when the same were purchased by affiant from said Schofield, and affiant is the owner and holder of the same.

That note No. 32 of said series, originally issued to said Nome Consolidated Dredging Company, was shortly after the issuance of the same, endorsed by said company and delivered to H. H. Moller, a merchant of the city of Nome, Alaska, in part payment of *bona fide* and existing indebtedness of said Nome Consolidated Dredging Company to said H. H. Moller; that prior to the foreclosure of said trust [143] mortgage said note was purchased by affiant, personally, from said H. H. Moller, and affiant ever since has continued to hold and own the same.

That note No. 35 of said series was, shortly after its issuance, endorsed and delivered to one, J. M. Sloan, in payment of *bona fide* and existing indebted-

ness of said Nome Consolidated Dredging Company to said Sloan, and a few days thereafter the same was purchased from said Sloan by affiant, personally, but said note was afterwards delivered to the Associated Oil Company in part payment of a then *bona fide* existing indebtedness of said Nome Consolidated Dredging Company to said Associated Oil Company, and said note was thereafter purchased and is now owned by one Henry L. McCoy, a resident of Philadelphia, Penn'a, as aforesaid.

That note No. 36 of said series was, shortly after its execution, endorsed and delivered to one J. M. Sloan for payment of *bona fide* existing indebtedness of said Nome Consolidated Dredging Company to said J. M. Sloan, who has continued to be and now is the owner and holder thereof.

Affiant further says that each and every one of said notes was issued, endorsed and delivered by said Nome Consolidated Dredging Company for an actual, *bona fide* existing debt of said Nome Consolidated Dredging Company, which existed prior to the 15th day of September, 1914, save and except the notes delivered to the Alaska Banking & Safe Deposit Company for money contemporaneously borrowed and also excepting note No. 36, which was issued, endorsed and delivered to J. M. Sloan for money contemporaneously borrowed.

That each and every one of said notes were so issued, sold and delivered for full value, dollar for dollar, although in many instances the said Nome Consolidated Dredging Company [144] was further heavily indebted to the various persons and

corporations who received said notes.

That affiant has read the complaint of the plaintiff in this action, and that the statements on page (4) of said complaint referring to said notes and alleging that in truth and in fact all of said notes were delivered and held by the defendant, E. E. Powell, for the purposes thereafter in said complaint set forth and alleged, are wholly untrue.

That the following statement contained on page (4) of said complaint:

“* * * that the said Alaska Banking & Safe Deposit Company was paid in full by defendant E. E. Powell, as general manager of the defendant Nome Consolidated Dredging Company, all money, sums and amounts so secured by said Thatcher mortgage, long prior to the commencement of the foreclosure of said mortgage hereinafter set forth * * * ”

is wholly untrue. That it is true that at the time of the foreclosure and sale referred to on said page (4), said Nome Consolidated Dredging Company was no longer indebted to said bank on account of said notes, but this was only because said notes had been theretofore purchased from said bank by one R. G. Cunningham, who was then and there the owner and holder of all of said notes originally delivered to said bank.

Affiant denies that said “Thatcher Mortgage” referred to in the plaintiff’s complaint, or the “Sloan Mortgage” referred to therein, was executed by the Nome Consolidated Dredging Company, or by him, as its vice-president and general manager, with any

intent to defraud any of its creditors, or with any intent to prefer any of the officers, agents or stockholders as against the plaintiff in this action.

That affiant has read paragraph IV of plaintiff's complaint and that the allegations contained therein are wholly false.

That affiant has read paragraph V of the plaintiff's [145] complaint, and alleges that in the month of September, 1914, the Nome Consolidated Dredging Company was in need of funds to further conduct its business, but as to whether or not it was wholly insolvent is a matter of opinion; that said company had a large amount of property, which had an earning capacity when in operation, but the actual cash value of its property was difficult to accurately estimate. That affiant had full knowledge of the actual condition of said company at said time, but affiant says that the allegations of said paragraph V of said complaint reading as follows:

“ * * * the aforesaid E. E. Powell while acting as vice-president and general manager of the said defendant Nome Consolidated Dredging Company, then and there planned, schemed and conspired with said M. W. Newton, Louis Eisenlohr, E. L. Webster, and the Alaska Dredging Company to fraudulently prefer each of them to other creditors of said Nome Consolidated Dredging Company and particularly as against this plaintiff; that in pursuance of said plan, scheme and conspiracy said defendant E. E. Powell caused said Thatcher mortgage and said Sloan mortgage to

be made, executed, delivered and recorded, thereby intending to cover all real and personal property belonging to the Nome Consolidated Dredging Company with liens to prevent this plaintiff, an unsecured creditor, from recovering its just claim from the assets of said debtor company."

is wholly and entirely false.

Affiant further denies that the suit referred to in paragraph VI of the plaintiff's complaint was brought pursuant to the scheme mentioned therein, or pursuant to any scheme whatsoever, other than to foreclose said mortgage in a lawful manner.

Affiant says that the allegation—

" * * * that immediately after said suit was commenced by said Powell he thereupon, as general manager of said defendant, Nome Consolidated Dredging Company, employed an attorney who appeared and filed an answer in said cause"—

is wholly untrue. And affiant denies that he acted for all the parties or directed all the proceedings in said cause, in conformity with any scheme, plan or conspiracy to defraud any of the creditors of the Nome Consolidated Dredging Co. [146] Affiant says that the decree in said cause was prepared partly by Geo. D. Schofield, who was himself one of the plaintiffs in said cause. Affiant denies that as part or parcel of any scheme or conspiracy he caused his attorney to prepare said decree so that any spurious or worthless notes could be used by him in bidding in the assets at the marshal's sale, or that he did any-

thing to prevent any *bona fide* bidders from bidding at said sale, or that in conformity with any scheme or conspiracy he bid in the property mentioned in said complaint.

Affiant denies that he used any spurious or worthless notes, under the terms of said decree, or otherwise, in paying for his bid at said sale.

Affiant further says that he purchased said property at said sale in his own name, but in trust for himself and the holders and owners of said notes, but denies that he took title at said sale for the use or benefit of any stockholder or stockholders of said Nome Consolidated Dredging Company, as such, or with intent to hinder, delay and defraud the plaintiff, or any other creditor, of said company.

Affiant denies that he organized, or caused to be organized the Nome Holding Company, in pursuance of any such scheme or plan as referred to in plaintiffs' complaint, or that thereafter the defendants Newton, Eisenlohr, Webster, Alaska Dredging Company, and affiant, or any of them, in conformity with the scheme mentioned in the plaintiff's complaint, organized the defendant, Alaska Mines Corporation; and affiant denies that the defendant, Alaska Mines Corporation, at any time had full or any knowledge of any of the alleged matters set forth in the plaintiff's complaint, other than such knowledge as might be obtained from the United States Commissioner and Recorder's Office at Nome, Alaska. [147]

Affiant denies that he or any of the parties mentioned in plaintiff's complaint perpetrated any fraud

upon the plaintiff and other creditors, or upon any of the stockholders of the Nome Consolidated Dredging Company, and denies that all or any of the stock of said "New Concern" if by said "new concern" was intended to be meant the Alaska Mines Corporation, or the Nome Holding Company, was subscribed and divided between any schemers or conspirators.

Affiant says with reference to the filing in the office of the clerk of the above-entitled court, a paper marked Exhibit "C," attached to plaintiff's complaint, that he has no recollection of having filed or causing the same to be filed; that said document purports to have been signed and sworn to by affiant, in the city of Seattle, Washington, on the 8th day of October, 1915, but that on said 8th day of October, 1915, affiant was not in said city of Seattle, Washington but was in the city of Nome, Alaska, having been here during the entire summer season and affiant did not leave Nome, Alaska, until on or about November 1st, of said year, That said statement was prepared in the office of said Nome Consolidated Dredging Company, in said city of Seattle, but was not prepared under affiant's supervision, and contained, as affiant verily believes, a true statement of the debts and liabilities of said company according to the books of account of said company which were in its said office in the city of Seattle. At the time that said statement was prepared it is evident that no notations had been made on the books of said company of the notes secured by the Sloan mortgage, referred to in plaintiff's complaint, although said notes had theretofore been executed and delivered, as hereinafter alleged. But

affiant denies that he conspired [148] and conducted said foreclosure proceedings in such a way and manner by the use of any spurious or worthless notes, or otherwise, so that all of said assets were confiscated by him and subsequently assigned and transferred to the defendant, Alaska Mines Corporation, in fraud of the rights of this plaintiff.

Affiant admits that after the sale of the assets of the Nome Consolidated Dredging Company under the foreclosure decree, he did take possession of said property and held the same for a certain time, as trustee for himself and the other owners of said notes, but alleges that there were no net proceeds of the mining operations for the year 1915.

Affiant denies that the Alaska Mines Corporation was organized by the defendants, M. W. Newton, Louis Eisenlohr, E. L. Webster, Alaska Dredging Company, and affiant, or that said corporation ever had any knowledge or notice of the rights of the plaintiff as a creditor of the defendant, Nome Consolidated Dredging Company.

Affiant further says that none of the property now in the possession of the Alaska Mines Corporation is being worn or depreciated, or that it will be rendered valueless for many years, but, on the contrary, the same has been and now is being rebuilt and refitted and large additions are being made thereto at great expense.

Affiant denies that the Alaska Mines Corporation threatens to dispose of any of the property mentioned in the plaintiff's complaint, but admits that it refuses to recognize any right, title or interest therein by the

Nome Consolidated Dredging Company.

Affiant further denies that in order to preserve or protect the property mentioned in the plaintiff's complaint herein *pendente lite*, it is necessary for the Court to [149] appoint a receiver to take possession of any of said assets, real or personal.

Affiant further says that on the 16th day of September, 1914, the Nome Consolidated Dredging Company, acting by affiant as Vice-president and General Manager, by authority of its Board of Directors, made, executed, and delivered to one, J. M. Sloan, as Trustee, a certain trust deed and mortgage, referred to in the plaintiff's complaint as the "Sloan Mortgage," conveying and transferring all the real and personal property of said Nome Consolidated Dredging Company, as security for the payment of a series of promissory notes, aggregating the sum of \$200,000, numbered from one to seventy, consecutively; that said promissory notes were executed by the said Nome Consolidated Dredging Company, and certified by the trustee mentioned in said mortgage, and thereafter four of said notes, numbered 1, 34, 64 and 65 were made payable to and delivered to Louis Eisenlohr, and aggregated in amount the principal sum of \$21,500.00; that notes numbered 35, 36, 37, 38, 39, 40, 49, 50, 58, 59, 60, 61, 62, and 63, were made payable to and delivered to M. W. Newton, and were of the principal sum of \$55,000.00; that the remainder of said notes were made payable to and delivered to the Alaska Dredging Company, and were of the principal sum of \$123,500.00. That at and prior to the execution and delivery of said notes de-

scribed to said L. H. Eisenlohr, the said Nome Consolidated Dredging Company, was indebted to the said Eisenlohr, for moneys theretofore borrowed by said company from said Eisenlohr, and moneys expended by said Eisenlohr for the use and benefit of said company, in a sum largely in excess of \$21,500.00, and said notes were made and delivered to said Eisenlohr, in part [150] payment of a *bona fide* existing debt then due and owing from said Nome Consolidated Dredging Company to said Eisenlohr; that at and prior to the execution and delivery of said notes above described to M. W. Newton, the said Nome Consolidated Dredging Company was indebted to the said Newton, for moneys theretofore borrowed by said company from said Newton and moneys expended by said Newton for the use and benefit of said company, in a sum largely in excess, of \$55,000.00, and said notes were made and delivered to the said Newton in part payment of a *bona fide* existing debt then due and owing from said Nome Consolidated Dredging Company to said Newton; that at the time said notes above mentioned were delivered to said Alaska Dredging Company, amounting in the aggregate to the principal sum of \$123,500.00, that Nome Consolidated Dredging Company was actually indebted to said Alaska Dredging Company, and to other persons whose claims were held by said Alaska Dredging Company, in trust for the owners thereof, in a sum of money largely in excess of \$123,500.00 and said notes were so executed and delivered to said Alaska Dredging Company, in payment of then existing *bona fide* debts due from said Nome Con-

solidated Dredging Company to said Alaska Dredging Company and other persons, whose claims were held by said Alaska Dredging Company in trust for the use and benefit of the various holders thereof, in a sum exceeding \$123,500.00.

That all of said notes so issued and secured by the said "Sloan Mortgage," so-called, were issued and delivered in payment of *bona fide* existing debts of said Nome Consolidated Dredging Company, and were issued for full value, dollar for dollar, and more. [151]

Affiant says that he has heard read the affidavit of William A. Gilmore, made herein on July 10, 1917, and knows the contents thereof. That the statement in said affidavit—

"That affiant was personally present at the said sales and knows that one Jafet Lindeberg, a wealthy resident of Nome, Alaska, was present at said sales intending to bid thereat, but was prevented from bidding on the sale of said assets by reason of the use by the said defendant E. E. Powell, of the said spurious notes referred to in plaintiff's complaint"—

is untrue. That affiant was personally present at the time said property was first offered for sale by the said United States marshal, under the execution referred to in the complaint herein, in said foreclosure suit. That said Lindeberg was then present and stated that if the sale was postponed to enable him to examine the property to be offered for sale he would be prepared to make a large and substantial bid or bids therefor. That thereupon, said United

States marshal did postpone the sale of all of the property covered by said mortgages and the decree of foreclosure thereof, save and except a small amount of furniture and fixtures, for the period of 48 hours, and thereafter at the time of such postponed sale said Lindeberg was present, but did not make any bid for any portion of said property, although the same was offered in a large number of separate parcels; that said Lindeberg was not prevented from bidding any amount he might wish to offer for any or all of such property at such sale for the reasons mentioned in the affidavit of said Gilmore, or any other reasons whatsoever.

Affiant further says that the statement contained in the affidavit of said Gilmore that he overheard this affiant admit that he had procured the decree of foreclosure mentioned in said complaint, to be prepared by his attorneys and under the supervision of his attorneys, so [152] that he could use the notes mentioned therein to prevent *bona fide* bidders from bidding at said sale, is untrue.

Affiant further says that the mortgages mentioned and described in the plaintiff's complaint as the "Thatcher Mortgage" and the "Sloan Mortgage" were in fact made for the purpose of securing the various persons to whom the notes described therein were made payable, or to whom they were endorsed and delivered, and who were *bona fide* creditors of the Nome Consolidated Dredging Company; that affiant may have stated said fact and that it was affiant's intention to organize a company to take the title to said property for the benefit of said security

holders, and affiant may have admitted said fact also, at some time.

It is also true that affiant, long after the execution of said mortgages, but prior to the foreclosure thereof, had possession, as trustee for the owners thereof of the several notes secured by said respective mortgages, and at the time of said sale affiant had in his possession, as trustee, for the respective holders of all the notes mentioned and described in the "Sloan Mortgage" and all the notes mentioned and described in the "Thatcher Mortgage" with the exception of three notes of the denominations of Five Hundred Dollars each, and possession of said three notes he obtained afterwards, endorsed in blank, before settling with the United States marshal. But affiant says that if it is intended by said affidavit to be intimated or inferred that the admissions therein referred to were made prior to the execution of either of said mortgages, or prior to the foreclosure thereof and the sale of said property under said execution, then said affidavit in that respect is untrue; and further, that if it is intended to be understood or inferred [153] from said affidavit that said mortgages were executed pursuant to any plan or scheme to defraud any person or persons, either the plaintiff herein, or any creditor or stockholder of the Nome Consolidated Dredging Company, said affidavit, in that respect is untrue.

Affiant further says with respect to the "Thatcher Mortgage," that the making and execution thereof was not thought of or contemplated until within a few days immediately prior to the time when the

same was in fact executed and the notes described therein executed, certified, issued and delivered to the respective holders; that said "Thatcher Mortgage" was executed, and the notes thereunder certified and delivered, as hereinbefore stated, primarily for the purpose of procuring further moneys from said Alaska Banking & Safe Deposit Company, to meet the immediate and urgent requirements of said Nome Consolidated Dredging Company, and because said Alaska Banking & Safe Deposit Company would not loan or advance to said Nome Consolidated Dredging Company, further money or moneys without adequate security.

Affiant further says with respect to the amounts bid by him at the marshal's sale referred to in said affidavit and the plaintiff's complaint herein filed, that the only reason why affiant did not bid in the various items of personal property and the real estate mentioned in plaintiff's complaint, at a greater price, was because of the large amount of money, necessary in such event, to be paid to said United States marshal as commission on said sale.

Affiant further says with respect to the organization of the Alaska Mines Corporation, that neither affiant nor said Eisenlohr, or Newton, or any person or persons connected with the Nome Consolidated Dredging Company, as [154] stockholders, or in any other way, were among the original incorporators of said Alaska Mines Corporation, but that shortly after the organization of said company the number of directors therein was increased to seven; that affiant, said Eisenlohr, and said Newton, became

the owners of one share each of the capital stock of said corporation and were elected as directors and qualified as such; that on or about said time four other persons were elected directors of said Alaska Mines Corporation, none of whom was ever at any time a stockholder or interested in said Nome Consolidated Dredging Company; that said board of directors, as thus constituted, consisted of the following persons.

James Gayley, of the City of New York; T. Crane, of the City of New York; August Heckshere of the City of New York; H. B. Livingston, of the City of New York; M. W. Newton, of the City of Philadelphia; Louis Eisenlohr, of the City of Philadelphia, and E. E. Powell, of Seattle, Washington.

That said persons last above named, have ever since continued to be and now are the directors of said Alaska Mines Corporation.

Affiant further says that the property sold under said foreclosure sale and described in the plaintiff's complaint, was sold and transferred by the Nome Holding Company, to the Alaska Mines Corporation in exchange for 3,701,820 fully paid-up shares of the capital stock of said Alaska Mines Corporation; thereupon said Nome Holding Company, by deed and bill of sale, transferred said property to said Alaska Mines Corporation. That at the time of the said sale and transfer of said property the seven persons above named were and constituted the board of directors of said Alaska Mines Corporation, and said board on behalf of said [155] Alaska Mines Cor-

poration made and approved the purchase of said property.

E. E. POWELL.

Subscribed and sworn to before me this 4th day of September, 1917.

[Seal]

O. D. COCHRAN,

Notary Public, Territory of Alaska.

My commission expires Aug. 4, 1919.

Filed in the office of the Clerk of the District Court, of Alaska, Second Division, at Nome. Sep. 4, 1917.
G. A. Adams, Clerk.

Thereupon the defendant, Alaska Mines Corporation, then offered in evidence the affidavit of J. H. Miles, which said affidavit was read and received in evidence, being in words and figures as follows, to wit:

Affidavit of J. H. Miles—September 4, 1917.

(Title of Court and Cause.)

United States of America,
Territory of Alaska,—ss.

J. H. Miles, being first duly sworn, says:

That he is a mining engineer by profession and is a member of the American Institute of Mining Engineers; that for the past fourteen years he has made gold dredging a specialty and has, during said period, *operating* dredges in California, Idaho, Montana and Alaska; that during the month of August, 1916, affiant was employed by the Alaska Mines Corporation, to go to Nome, Alaska, and to make an examination of the properties of said Alaska Mines Corporation and to report thereon.

That affiant came to Nome, in said month of August, 1916, and made a careful examination of the properties of said Alaska Mines Corporation within the Nome Mining District, Territory of Alaska; that thereafter and on or about the month of January, 1917, affiant was employed by the said Alaska Mines Corporation [156] as General Superintendent in charge of the dredging operations of said company in Alaska.

That affiant thereafter came to Nome over the winter trail, arriving about the 16th day of April, 1917, and that he thereafter immediately took charge of the property of said company.

That the property of said company consisted of placer mining claims in the Nome District, a Power Plant on Bourbon Creek, one Dredge situated on Bourbon Creek, known as No. 2; one dredge situated on Wonder Creek known as Dredge No. 1; the hull of a dredge situated on Flat Creek and known as Dredge No. 3; buildings in Nome, automobiles and miscellaneous mining machinery and equipment; that said Power Plant situated on Bourbon Creek, when affiant examined the same in August, 1916, and until the same was repaired as hereinafter stated, in 1917, was badly out of repair and in a run-down condition and wholly unfit for operation; that since affiant took charge of said power plant for the said Alaska Mines Corporation, the same has been completely and thoroughly overhauled and repaired and is now in a good operating condition; that said Alaska Mines Corporation necessarily expended in overhauling and repairing said Power Plant and placing the same in

condition so that it could be operated, over the sum of Three Thousand Dollars.

That prior to the time affiant took charge of said Power Plant and overhauled and repaired the same, said power plant consumed about sixty-five barrels of crude oil per day in generating electricity; that since affiant repaired and overhauled said power plant said power plant consumes twenty-six barrels of oil per day, generating approximately the same electrical power; that said power plant in said present condition, is worth not less than the sum of forty thousand dollars.

That said Dredge on Bourbon Creek known as Dredge No. 2, [157] was, when affiant took charge of the properties of said company, badly run down and out of repair, and was in such general bad condition that the same was unfit for operation and could not be economically operated or operated at a profit upon said Bourbon Creek. That the screen upon said dredge was unfit for use and affiant, since taking charge of the same, has removed such screen and replaced it with a screen of modern type; also placed upon said dredge a new conveyor belt and replaced worn out pieces in the winch of said dredge, and has generally overhauled and repaired said dredge at an expense of about twenty-four thousand dollars;

That said dredge is a seven cubic-foot bucket dredge and is electrically operated from power obtained from said power plant on Bourbon Creek; that said dredge is now in first-class condition and is of the value of not less than one hundred and twenty-five thousand dollars, and could not be duplicated for

less than that amount. That said dredge is now being actively operated, upon said Bourbon Creek.

That the dredge situated on Wonder Creek known as Dredge No. 1 was sunk when affiant took charge of the properties of said Alaska Mines Corporation, and was a total wreck, and outside of some of the electrical machinery, pumps and a small amount of timber, said dredge was of no value except as scrap; that all parts of such dredge having any value have been preserved and is now possessed by the Alaska Mines Corporation.

That the dredge hull situated on Flat Creek and called Dredge No. 3 was purchased by the Alaska Mines Corporation from one Ewing; that said dredge hull when affiant took possession of the properties of said Alaska Mines Corporation, was of the value not to exceed forty thousand dollars; that such dredge hull was too small for the type of machinery to be installed therein and the same had to be reconstructed and enlarged. [158]

That the said Alaska Mines Corporation purchased machinery to be installed in the said dredge hull on Flat Creek and the same has now been installed and said dredge is now completed and actively operating on said Flat Creek.

That the said Alaska Mines Corporation has expended in the reconstruction and enlarging of said dredge hull, and in the purchasing, transporting and installing of the machinery thereon, the sum of about one hundred thousand dollars.

That since the purchase of the machinery on such dredge, prices have advanced to such an extent that

said dredge is now of the value of over two hundred thousand dollars, and said dredge could not be duplicated for less than that amount.

That the dredge situated on Holyoke Creek and known as Dredge No. 4, belonging to the Alaska Mines Corporation, was purchased by said corporation from one Greenberg; that the same when purchased, consisted of a hull of the value of about forty thousand dollars.

That since said purchase of said hull by the said Alaska Mines Corporation, the Alaska Mines Corporation has purchased machinery to install in said dredge and have reconstructed the said hull of said dredge and are now installing machinery therein.

That said Alaska Mines Corporation has expended about the sum of one hundred and fifteen thousand dollars in the reconstruction of said dredge hull and for machinery to be installed therein; that said dredge will be completed and ready for operation in about thirty days.

That the prices of machinery has materially advanced since the purchase of machinery for said last-named dredge, and the said dredge when completed will be worth at least two hundred thousand dollars, and could not be duplicated [159] for a less amount.

That since affiant took charge of the properties of said Alaska Mines Corporation it has established a camp on Flat Creek at a cost of not less than three thousand dollars.

That the said Alaska Mines Corporation is now employing thirty-six men for the carrying on of its

operations in the Nome District.

That said dredge on Flat Creek and the said dredge on Bourbon Creek are the only dredges of the Alaska Mines Corporation now being actually operated; that said dredges have been operating for a few days and that no gold has been cleaned up from either of said dredges up to the present time.

That no active mining has been done by said Alaska Mines Corporation since affiant has been its general superintendent, except the operation of said last-named dredges for the past few days.

That none of the property of the said Alaska Mines Corporation has been or is being materially injured or impaired, but on the contrary the value of said properties of said Alaska Mines Corporation have been materially enhanced by reason of the repairs and improvements hereinbefore enumerated.

J. H. MILES.

Subscribed and sworn to before me this the 4th day of September, 1917.

[Seal]

O. D. COCHRAN,

Notary Public in and for the Territory of Alaska.

(My commission expires on the 4th day of August, 1919.)

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome, Alaska. Sep. 4, 1917. G. A. Adams, Clerk.

Thereupon the defendant, Alaska Mines Corporation, then [160] offered in evidence the affidavits of H. S. Thompson, which said affidavits were read and received in evidence, being in words and figures as follows, to wit:

Affidavit of H. S. Thompson—August 15, 1917.

(Title of Court and Cause.)

United States of America,
Territory of Alaska,—ss.

H. S. Thompson, being first duly sworn, deposes and says:

That he is and has been since the 15th day of May, 1917, Auditor and Assistant Treasurer of the Alaska Mines Corporation, one of the defendants in the above-entitled action; that said corporation was organized in the month of June, 1916; under the laws of the State of Virginia, and has since the fall of 1916, been engaged in business at Nome, Alaska.

That on the 15th day of August, 1916, said Alaska Mines Corporation acquired by purchase from the Nome Holding Company, a corporation organized and existing under the laws of the State of Washington, a large number of placer mining claims, and interests therein, and leases and options on various other placer mining claims situate in the Cape Nome Recording District, Territory of Alaska; that on the same date the said Alaska Mines Corporation, acquired by purchase from said Nome Holding Company, a large amount of personal property, including a power plant on Bourbon Creek, a gold placer dredge known as Bourbon dredge or No. 2 dredge, all situated on Bourbon Creek; a placer dredge known as No. 1 dredge, situated on Wonder Creek and also known as the Wonder Dredge, and a large quantity of placer mining tools and equipment.

[161]

That said Alaska Mines Corporation did, on or about the 20th day of November, 1916, acquire, by purchase, an uncompleted dredge known as No. 3 Dredge, situated on Flat Creek.

That said Alaska Mines Corporation has also since said date, acquired, by purchase, a number of other placer mining claims and interests therein, situated in said Cape Nome Recording District, Territory of Alaska.

That on or about the 17th day of April, 1917, said Alaska Mines Corporation acquired, by purchase, from one H. Greenberg, fifty-one per cent interest in placer claim No. 2 on Holyoke Creek, and an uncompleted dredge situated thereon known as No. 4 Dredge; that said interest in said claim and said dredge is subject to an unpaid mortgage indebtedness of \$35,000.00.

That since the Alaska Mines Corporation acquired the property above enumerated and described, it has expended large sums of money in repairing, completing and equipping said dredges, some of the particulars of which are as follows:

That said company sent J. H. Miles, its General Superintendent, from Seattle, Washington, over the trail to Nome, Alaska, where he arrived on or about April 6, 1917, and immediately took charge of the property of said company and commenced to put the same in shape for operation.

That said Alaska Mines Corporation has actually paid out for machinery for its No. 3 Dredge, above mentioned, the sum of \$51,500.00; that this machinery has all been delivered, and that in addition

thereto said Alaska Mines Corporation has paid the sum of \$10,000, freight on said machinery. That said dredge is an eight and a half cubic [162] foot, close connected, bucket dredge, electrically operated, and when completed in the manner above indicated, cannot be duplicated for and is worth not less than \$200,000.00.

That said Alaska Mines Corporation has actually paid for machinery for its No. 4 Dredge, a portion of which has arrived, and for the remainder of which the company holds bills of lading, the sum of \$74,300.00, exclusive of freight charges. That said machinery is now being installed, and when completed said dredge cannot be duplicated for and is actually worth not less than \$200,000.00. That said No. 4 Dredge is an eight and a half cubic foot, close connected, bucket dredge, electrically operated.

That said Alaska Mines Corporation is now actively engaged in repairing and placing in working order the dredge known as Bourbon Creek dredge, or No. 2 dredge, situate on Bourbon Creek, in said Cape Nome District, installing thereon a new type of screen and making other alterations and repairs; that said No. 2 dredge is a seven cubic foot bucket dredge, electrically operated, and when refitted and repaired, in the manner above indicated, cannot be duplicated for and will be worth not less than \$100,000.00. That said dredge is situated on ground leased from the Anvil Hydraulic & Drainage Company.

That said Alaska Mines Corporation is also the owner of a large power plant situate on Bourbon

Creek in said Cape Nome District, capable of generating sufficient electric power to operate said three dredges; that said plant and the machinery therein, has been refitted and repaired by said company during the present spring and summer at great expense, and is now in running order and capable of developing 1,000 horse power electric energy. That said power plant in its present condition cannot be duplicated for and is worth not [163] less than \$40,000.00.

Affiant further says that it is the intention of said company to completely equip and place in running order said three dredges in the Nome District, during the present season, and thereafter operate the same by electric power from said plant.

That said Alaska Mines Corporation has since the months of May and June, and is now directly employing from 30 to 50 men daily, and when said dredges are equipped will employ in operating the same and the power house above mentioned, an average of 30 men daily.

That said Alaska Mines Corporation has actually disbursed, up to the present time, in the making of said improvements, the sum of \$60,000, exclusive of the amounts hereinbefore stated.

That said company has not up to the present time done any actual mining or extracted any placer gold from any placer claim belonging to it, or held under lease or option by it.

That said Alaska Mines Corporation was organized with a capital stock of \$10,000,000.00, divided into 10,000,000 shares of the par value of \$1.00 each,

of which amount at least the number of 3,781,000 shares of said stock have actually been issued. That the stock of said Alaska Mines Corporation has been actively dealt in on the New York curb market, and a large number of shares are there bought and sold daily to the public generally, and said stock had a market value at the last report received in the month of July, 1917, of 75 cents per share.

H. S. THOMPSON.

Subscribed and sworn to before me this 15th day of August, [164] 1917.

[Seal]

G. J. LOMEN,

Notary Public, Territory of Alaska.

My commission expires June 27, 1921.

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 4, 1917.
G. A. Adams, Clerk.

Affidavit of H. S. Thompson—September 4, 1917.

(Title of Court and Cause.)

United States of America,
District of Alaska,—ss.

H. S. Thompson, being first duly sworn, deposes and says:

That he is the Auditor and Assistant Treasurer of the defendant, Alaska Mines Corporation; that on the 15th day of August, 1917, affiant made an affidavit in the above-entitled action, intended to be used upon the order to show cause why a receiver should not be appointed herein. That since the making of said affidavit, the said defendant has continued, at large expense, to finish, repair and reconstruct and

equip its dredges Nos. 2 and 3, and the same are now in actual operation, as is also the power plant of said company referred to in affiant's other affidavit. That the equipping of dredge No. 4 is not yet completed.

H. S. THOMPSON.

Subscribed and sworn to before me this 4th day of September, 1917.

[Seal]

O. D. COCHRAN,

Notary Public, Territory of Alaska.

My commission expires Aug. 4, 1919.

Filed in the office of the Clerk of the District Court of Alaska, Second Division at Nome. Sep. 4, 1917.
G. A. Adams, Clerk. [165]

Thereupon the defendant, Alaska Mines Corporation, then offered in evidence the affidavit of Henry L. McCoy, which said affidavit was read and received in evidence, being in words and figures as follows, to wit:

Affidavit of Henry L. McCoy—August 4, 1917.

(Title of Court and Cause.)

State of Pennsylvania,

County of Philadelphia,—ss.

Henry L. McCoy, being duly sworn according to law, deposes and says that he has read the summons issued in the above-entitled case, wherein it is recited that promissory notes aggregating \$25,000 were issued to the Alaska Banking and Safe Deposit Company under a first mortgage executed by the Nome Consolidated Dredging Company; and that affiant has read the averment in the said Bill that the said

\$25,000 was repaid to the Alaska Banking and Safe Deposit Company, in full satisfaction of said notes, prior to the foreclosure proceedings in said summons recited. Your affiant avers that all of said notes, aggregating \$25,000, were not owned by the said Alaska Banking and Safe Deposit Company, but that, on the contrary, your affiant, who was neither a stockholder nor officer of any of the companies named in the aforesaid proceedings, purchased certain of said first mortgage notes aggregating \$4,110.34; that your affiant purchased the said notes with his own personal funds and not at the instance and on behalf of the Alaska Banking and Safe Deposit Company, and that said notes were not liquidated in full and the amount advanced by your affiant repaid to him in full either prior to the foreclosure proceedings recited in the Bill or at any time since.

HENRY L. McCOY.

Sworn to and subscribed before me this fourth day of August, A. D. 1917. [166]

[Seal]

NELLIE S. AITKEN,

Notary Public.

My commission expires Feb. 19, 1921.

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. G. A. Adams, Clerk. Sep. 4, 1917.

Thereupon the defendant, Alaska Mines Corporation, then offered in evidence the affidavit of M. W. Newton, which said affidavit was read and received in evidence, being in words and figures as follows, to wit:

Affidavit of Mahlon W. Newton—August 3, 1917.

(Title of Court and Cause.)

State of Pennsylvania,

County of Philadelphia,—ss.

Mahlon W. Newton, being duly sworn according to law, deposes and says that it is true as in the Bill of Complaint in the above cause recited, that there were delivered to the affiant seven (7) of the said promissory notes secured by the \$25,000 first mortgage, said notes aggregating \$3,500. That said notes were delivered to and held by this affiant until at or about the time that the foreclosure suit in said Bill of Complaint arose, when the same were duly endorsed in blank and delivered into the custody of E. E. Powell, then acting in his individual capacity on behalf of all the holders of the securities issued under the terms of the aforesaid mortgage. That said notes, at the time of the foreclosure proceedings, were due and owing and were not then nor ever have been paid in cash. That all of said notes aggregating \$3,500 were acquired by this affiant by paying to the Nome Consolidated Dredging Company the full sum of \$3,500 in cash.

That it is true that under the second or \$200,000 mortgage, there were issued to this affiant at least fourteen (14) [167] of said mortgage notes aggregating, with interest, \$57,603.32, as will more fully appear by the records of your Honorable Court in the aforesaid foreclosure proceedings. That the said notes were acquired by this affiant by paying either to or on behalf and at the direction of the

Nome Consolidated Dredging Company the full principal sum of said notes in cash. That all of said advances, loans or payments aggregating the sums aforesaid made by your affiant were of your affiant's own personal funds and were loaned to or advanced the said debtor corporation at its special instance and request. That all of the aforesaid second mortgage notes were delivered to your affiant and remained in his possession until endorsed in blank and delivered into the custody of the said E. E. Powell, then acting in his individual capacity on behalf of all the holders of the securities issued under the terms of the aforesaid mortgage; and further, your affiant avers that in the purchase of the said mortgage notes and loans and advances your affiant paid to and on behalf of the Nome Consolidated Dredging Company a sum of money aggregating upwards of \$85,000, and that this sum has never been repaid to your affiant in whole or in part.

Your affiant avers that he at no time entered into any conspiracy or combination with parties to the complainant unknown or with the parties named in the complainant's Bill, or with any other parties, to injure or defraud the complainant or to prevent it from collecting any sum or sums of money by the Nome Consolidated Dredging Company due the said complainant.

MAHLON W. NEWTON.

Sworn to and subscribed before me this 3d day of August, A. D. 1917.

[Seal]

MARY A. McSORLEY,

Notary Public.

My commission expires March 25th, 1921. [168]

Filed in the office of the Clerk of the District Court of Alaska, Second Division at Nome. Sep. 4, 1917. G. A. Adams, Clerk.

Thereupon the defendant, Alaska Mines Corporation, then offered in evidence the affidavit of R. G. Cunningham, which said affidavit was read and received in evidence, being in words and figures as follows, to wit:

Affidavit of R. G. Cunningham—August 3, 1917.

(Title of Court and Cause.)

State of Pennsylvania,

County of Philadelphia,—ss.

R. G. Cunningham, being duly sworn according to law, deposes and says that he has read the summons issued in the above-entitled case, wherein it is recited that promissory notes aggregating \$25,000 were issued to the Alaska Banking and Safe Deposit Company under a first mortgage executed by the Nome Consolidated Dredging Company and that affiant has read the averment in the said Bill that the said \$25,000 was repaid to the Alaska Banking and Safe Deposit Company, in full satisfaction of said notes, prior to the foreclosure proceedings in said summons recited. Your affiant avers that all of said notes, aggregating \$25,000, were not owned by the said Alaska Banking and Safe Deposit Company, but that on the contrary, your affiant, who was neither a stockholder nor officer of any of the companies named in the aforesaid proceedings, purchased certain of said first mortgage notes aggregating \$11,100. That your affiant purchased the said

notes with his own personal funds and not at the instance and on behalf of the Alaska Banking and Safe Deposit Company, and that said notes were not liquidated in full and the amount advanced by your affiant repaid to him in full either prior to the foreclosure proceedings recited in the Bill or any *any* time since. [169]

R. G. CUNNINGHAM.

Sworn to and subscribed before me this 3d day of August, A. D. 1917.

[Seal]

MARY A. McSORLEY,
Notary Public.

My commission expires March 25th, 1921.

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 4, 1917.
G. A. Adams, Clerk.

Thereupon the defendant, Alaska Mines Corporation, then offered in evidence the affidavit of E. L. Webster, which said affidavit was read and received in evidence, being in words and figures as follows, to wit:

Affidavit of E. L. Webster—August 20, 1917.

(Title of Court and Cause.)

State of Washington,
County of King,—ss.

E. L. Webster, being first duly sworn according to law, deposes and says that he has read the summons issued in the above-entitled cause, wherein it is recited that promissory notes aggregating \$25,000 were issued to the Alaska Banking and Safe Deposit Company under a first mortgage executed by the Nome

Affidavit of J. V. Sheldon—July 14, 1917.

(Title *and* Court and Cause.)

United States of America,
Territory of Alaska,—ss.

J. V. Sheldon, being first duly sworn, deposes and says:

That he is and has been ever since prior to the year 1914, the Cashier of the Alaska Banking & Safe Deposit Company, at Nome, Alaska. That during the years 1914 and 1915, F. H. Thatcher, was President and Manager of said Alaska [171] Banking & Safe Deposit Company.

That on the 15th day of September, 1914, at the opening of business on that day the Nome Consolidated Dredging Co., a corporation, was indebted to the Alaska Banking & Safe Deposit Company, on two promissory notes in the sum of \$5,889.66, and was not otherwise indebted to said Alaska Banking & Safe Deposit Co.

That on said 15th day of September, 1914, said notes were paid, and on the same day the Alaska Banking & Safe Deposit Co., loaned and advanced said Nome Consolidated Dredging Company the sum of \$10,182.79, to evidence which said Nome Consolidated Dredging Company, delivered to said Alaska Banking & Safe Deposit Co., seven (7) promissory notes, the numbers and amounts thereof being as follows:

No. 1	for	500.00
2	for	793.13
3	for	3500.00
4	for	1000.00
5	for	1000.00
6	for	444.83
18	for	2944.83

That all of said notes were dated the 14th day of September, 1914, and were part of an issue of notes aggregating \$25,000.00 and secured by a mortgage and trust deed, dated September 1, 1914, made by the Nome Consolidated Dredging Company, to F. H. Thatcher, Trustee; that although said notes and said mortgage and trust deed were dated September 14, 1914, said notes were not delivered to said bank, or money advanced thereon, until the following day.

Affiant further says that on the 19th day of September [172] 1914, said Alaska Banking & Safe Deposit Co., purchased from one, W. H. Webb, a merchant of the City of Nome, Alaska, two notes secured by said mortgage, numbered respectively, 9 and 33, for \$500.00 each.

That on the 21st day of September, 1914, said note above-mentioned as "No. 2 for \$793.13" was purchased from the Alaska Banking & Safe Deposit Co., by E. E. Powell, and endorsed in blank, without recourse, by said Alaska Banking & Safe Deposit Co., and delivered to said E. E. Powell.

Affiant further says that said Alaska Banking & Safe Deposit Company, continued to own and hold said notes above mentioned, viz., Nos. 1, 3, 4, 5, 6,

9, 18 and 35, all of which bore interest at the rate of twelve per cent per annum, except note No. 33, which bore interest at the rate of six per cent per annum, until the 26th day of April, 1915; and that on the 26th day of April, 1915, said Alaska Banking & Safe Deposit Co., sold, assigned and delivered all of said notes to one, Robert G. Cunningham, for the sum of \$11,106.19, being the full amount of said notes, with interest accrued to date, which sum was paid to the Alaska Banking & Safe Deposit Co., on said 26th day of April, 1915, in the City of San Francisco, State of California, and thereupon said Alaska Banking & Safe Deposit Co., assigned and delivered said notes to said Robert G. Cunningham.

J. V. SHELDON.

Subscribed and sworn to before me this 14th day of July, 1917.

[Seal]

O. D. COCHRAN,

Notary Public, Territory of Alaska.

My commission expires Aug. 4, 1919.

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 4, 1917.
G. A. Adams, Clerk. [173]

Thereupon the defendant, Alaska Mines Corporation, then offered in evidence the affidavit of G. J. Lomen, which said affidavit was read and received in evidence, being in words and figures as follows, to wit:

Affidavit of G. J. Lomen—July 14, 1917.

(Title of Court and Cause.)

United States of America,
Territory of Alaska,—ss.

G. J. Lomen, being first duly sworn, deposes and says:

That he is and has been for more than ten years last past an attorney at law, practicing his profession at Nome, Alaska.

That in the month of September, 1914, affiant was attorney for and represented the Associated Oil Co., who had a claim against the Nome Consolidated Dredging Co., for more than \$6,000.00, for fuel oil theretofore sold and delivered to said Nome Consolidated Dredging Co.

That on the 25th day of September, 1914, in part payment of said indebtedness, the Nome Consolidated Dredging Co. delivered to affiant, as attorney for the Associated Oil Co., eight (8) certain promissory notes, dated September 14, 1914, and secured by a mortgage and trust deed, dated September 14, 1914, made by said Nome Consolidated Dredging Co., to F. H. Thatcher, Trustee; the numbers and amounts of said notes being as follows:

No. 17	for	\$262.04	
37	for	555.17	
26	for	500.00	
27	for	500.00	
28	for	500.00	
34	for	500.00	
2	for	793.13	
35	for	500.00	[174]

and were a part of a series of notes amounting in the aggregate to \$25,000.00, secured by said trust deed and mortgage.

That according to affiant's recollection all of said notes were signed by said Nome Consolidated Dredging Company, and all of them were made payable to said Nome Consolidated Dredging Company, and by said company endorsed and delivered to affiant as attorney for said Associated Oil Company, except the note No. 2, was originally made payable to the Alaska Banking & Safe Deposit Company, and by it endorsed without recourse.

That affiant forwarded said notes to the Associated Oil Company, at San Francisco, California, shortly after receiving them.

G. J. LOMEN.

Subscribed and sworn to before me this 14 day of July, 1917.

[Seal]

O. D. COCHRAN,

Notary Public, Territory of Alaska.

My commission expires Aug. 4, 1919.

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 4, 1917.
G. A. Adams, Clerk.

Whereupon the defendant Alaska Mines Corporation rested.

Whereupon, the plaintiff in rebuttal offered the reply of the plaintiff to the separate answer of the Alaska Mines Corporation, which said reply had been theretofore filed in the above-entitled action, and the same was read and received in evidence, being in words and figures as follows, to wit:

**Reply to Separate Answer of the Defendant Alaska
Mines Corporation.**

(Title of Court and Cause.)

Comes now the plaintiff in the above-entitled action [175] and for a reply to the separate answer of the defendant Alaska Mines Corporation, admits, denies and alleges as follows:

Replying to said defendant's further answer and affirmative defense plaintiff alleges:

I.

Replying to paragraph one thereof it admits that said defendant is a corporation organized, created and existing under and by virtue of the laws of the State of Virginia and that its capital stock is \$10,000,000, divided into ten million shares of the par value of one dollar per share, but denies each and every other allegation, matter and thing therein contained and the whole thereof.

II.

Replying to paragraph two thereof plaintiff admits that the Court made and entered the order therein described and that the marshal made, executed and delivered the bill of sale therein described and that said bill of sale was recorded as therein alleged but denies each and every other allegation, matter and thing therein contained and the whole thereof.

III.

Replying to paragraph three thereof, plaintiff admits that the United States marshal made, executed and delivered the deed therein alleged, and that the

same was recorded and that Exhibit "B" annexed to said answer is a correct copy of the same but denies each and every other allegation, matter and thing therein contained, and the whole thereof.

IV.

Replying to paragraph four thereof, plaintiff admits that the defendant E. E. Powell made, executed and delivered to the Nome Holding Company the deed described in said paragraph, and that the same was recorded as therein alleged, and that Exhibit "C" [176] annexed to said answer is a correct copy of said instrument, but denies each and every other allegation, matter and thing therein contained, and the whole thereof.

V.

Replying to paragraph five thereof, plaintiff denies each and every allegation, matter and thing therein contained, and the whole thereof, except that it admits said defendant delivered to said Nome Holding Co., certificates for 3,701,820 shares of capital stock of said defendant.

VI.

Replying to paragraph six thereof, plaintiff admits that the deeds or instruments therein mentioned were made and delivered and recorded as therein alleged, and that the copies set forth as Exhibits "D" and "E" to said answer are true copies of said instruments, but denies each and every other allegation, matter and thing therein contained, and the whole thereof.

VII.

Replying to paragraph seven thereof, plaintiff de-

nies each and every allegation, matter and thing therein contained, and the whole thereof. And further replying to said paragraph plaintiff alleges that the said defendant, Alaska Mines Corporation, took the said instruments from the said Nome Holding Company, and took title to all of said property, real and personal, from said Nome Holding Company, with full and complete actual notice, as well as constructive or record notice, of all of the fraudulent acts and things alleged in plaintiff's complaint.

VIII.

Replying to paragraph eight thereof, plaintiff alleges that it has no knowledge or information of the facts therein alleged and therefore upon information and belief denies each and every allegation, matter and thing thereof, and the whole thereof, [177] except that it admits that the defendant, Alaska Mines Corporation, is now engaged in mining operations at Nome, Alaska, but it particularly denies that the said defendant is solvent or that it has assets in excess of the plaintiff's claims, other than the assets, real and personal, of the Nome Consolidated Dredging Company, acquired by transfers under the foreclosure proceedings mentioned in plaintiff's complaint. And further replying to said paragraph eight plaintiff alleges that the said Alaska Mines Corporation has a total indebtedness of over four hundred thousand dollars (\$400,000.00), nearly all of which is covered by mortgage liens against its assets far in excess of its actual market value.

WHEREFORE plaintiff having fully replied to the separate answer of the defendant Alaska Mines

Corporation, prays for the relief demanded in its complaint.

T. M. REED and
WILLIAM A. GILMORE,
Attorneys for Plaintiff.

United States of America,
Territory of Alaska,
Second Division,—ss.

William A. Gilmore, being duly sworn, on oath deposes and says:

That he is one of the attorneys for the plaintiff in the above-entitled suit; that he has prepared the foregoing reply, knows the contents thereof and the same is true as he verily believes. That he makes this verification for and on behalf of the plaintiff corporation for the reason that said plaintiff is a foreign corporation and has no officer or agent within the Territory of Alaska.

WILLIAM A. GILMORE.

Subscribed and sworn to before me this 5th day of September, 1917. [178]

[Seal]

D. B. CHACE,
Notary Public for the Territory of Alaska, Residing
at Nome, Alaska.

(My commission expires May 12th, 1921.)

Filed in the office of the clerk of the District Court of Alaska, Second Division, at Nome, Sep. 6, 1917.
G. A. Adams, Clerk.

Whereupon the plaintiff then offered in evidence the annual statement of the Alaska Mines Corporation, and the same was admitted and marked "Plain-

tiff's Exhibit 4," and received in evidence and read to the Court, being in words and figures as follows, to wit:

**Plaintiff's Exhibit No. 4—Annual Statement of
Alaska Mines Corporation.**

ANNUAL STATEMENT.

ALASKA MINES CORPORATION.

10¢ I. T. R. S. attached and cancelled.

ALASKA MINES CORPORATION, a corporation duly organized and existing under the laws of the Commonwealth of Virginia, by its President and Secretary and a majority of the Board of Directors, DOES HEREBY CERTIFY as follows:

FIRST. The name of the corporation is ALASKA MINES CORPORATION, and the location of its principal office or place of business without the District of Alaska is Richmond, Virginia, and the location of its principal office within the District of Alaska is at Juneau, and its place of business is at Nome.

SECOND. The amount of its capital stock is Ten Million Dollars (\$10,000,000).

THIRD. The amount of its capital stock actually paid in money is Two Thousand Dollars (\$2,000).

FOURTH. The amount of its capital stock paid in in any other way is Three Million, Seven Hundred and One Thousand, Eight [179] Hundred and Twenty Dollars (\$3,701,820), same being paid in in property.

FIFTH. The amount of the assets of the corporation is Two Million Dollars (\$2,000.000) consisting

of certain mining claims and other real and personal property having an actual cash value of Two Million Dollars (\$2,000,000).

SIXTH. The liabilities of the corporation amount to Four Hundred and Six Thousand Dollars (\$406,000) of which Three Hundred Thousand (\$300,000), is secured by mortgages on the property of the corporation, the balance being deferred payments on account of mining claims for construction work and other miscellaneous liabilities.

We the undersigned, being the President, the Secretary, and a majority of the Board of Directors of said ALASKA MINES CORPORATION, DO HEREBY CERTIFY to the correctness of the foregoing statement.

JAMES GAYLEY,

President.

WALTER S. REED,

Secretary.

JAMES GAYLEY,

THERON I. CRANE,

HENRY B. LIVINGSTON,

E. E. POWELL,

Majority of Board of Directors.

State of New York,

County of New York,—ss.

On this 4th day of August, 1916, personally appeared before me Theron I. Crane, and E. E. Powell, being two of Directors of the Board, of the above-

named corporation, and upon being sworn, they did depose and say that the foregoing is true.

[Seal] THOS. M. APPLGARTH. [180]
Notary Public No. 67, New York Co. New York
Registered No. 7021.

My commission expires Mch. 30, 1917.

State of New York,
County of New York,—ss.

No. 20998 Series B.

I, WILLIAM F. SCHNEIDER, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, That

THOS. M. APPLGARTH, whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition, or proof and acknowledgment, a Notary Public in and for such County, duly commissioned and sworn, and authorized by the laws of said State, to take depositions and to administer oaths to be used in any Court of said State and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and

County, the 23 day of August, 1916.

[Seal]

WM. F. SCHNEIDER,

Clerk.

10¢ I. R. S. attached and cancelled.

State of New York,

County of New York,—ss.

On this 8th day of Aug., 1916, personally appeared before me, James Gayley, President, Walter S. Reed, Secretary, James Gayley and Henry B. Livingston, Directors of the above-named corporation, and upon being sworn, they did depose and say that the foregoing is true, and that James Gayley, T. I. Crane, H. B. Livingston and E. E. Powell, are a majority of the directors.

[Seal]

JOHN H. GEWECKE,

Notary Public, Kings County, No. 23. Certificate
Filed in New York County No. 44. Kings
County Register's No. 8024. New York County
Register's No. 8054.

Commission expires Mch. 30, 1918. [181]

State of New York,

County of New York,—ss.

No. 21170 Series B.

I, WILLIAM F. SCHNEIDER, Clerk of the
County of New York, and also Clerk of the Supreme
Court for the said County, the same being a Court of
Record, DO HEREBY CERTIFY, That

JOHN H. GEWECKE, whose name is subscribed
to the deposition or certificate of the proof or
acknowledgment of the annexed instrument, and
thereon written, was, at the time of taking such
deposition or proof and acknowledgment, a Notary

Public acting in and for the said County, duly commissioned and sworn, and authorized by the laws of said State to take depositions and also acknowledgments and proofs of Deeds, or conveyances for land, tenements or hereditaments in said State of New York. That there is on file in the Clerk's office of the County of New York, a certified copy of his appointment and qualification as Notary Public of the County of Kings with his autograph signature. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition, or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County this 23 day of August, 1916.

[Seal]

WM. F. SCHNEIDER,

Clerk.

10¢ I. T. R. S. attached and cancelled.

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 1, 1917, G. A. Adams, Clerk.

Whereupon the plaintiff offered in evidence the affidavit of William M. Eddy, which said affidavit was read and received in evidence, being in words and figures, as follows, to wit:

Affidavit of Wm. M. Eddy—September 4, 1917.

(Title of Court and Cause.)

United States of America,
Territory of Alaska,
Second Division,—ss.

William M. Eddy, being duly sworn, on oath deposes and says: That he is a resident of the town of Nome, Alaska, and has been residing in Nome for the past eighteen years.

That affiant is very familiar with most of the placer claims on Bourbon Creek, Flat Creek and what is called the Third [182] Beach Line near Nome. That on or about the 22d day of August, 1917, affiant was employed by plaintiff in the above-entitled action and given a list of the property mentioned and described in Exhibit "A" of the plaintiff's complaint in the above-entitled action, with instructions to investigate the condition of the same. That in the list of property given to affiant to inspect was a dredge described as follows: "Also one 7 cubic feet, open connected bucket, Bucyrus Type Dredge, built in 1909; now operating on the Chestnut Tundra placer claim on Wonder Creek, also all the cables and other appurtenances." That affiant went to said vicinity and found the said dredge had been dismantled and many parts of the dredge scattered all over the tundra in the vicinity of the place where said dredge was formerly operating. That said dredge had been dismantled during the past summer of 1917 and many of its parts taken and removed, the remainder of said

dredge being scattered and lying unprotected and exposed to the elements.

That affiant thereafter went to the dredge known as the Flat Creek Dredge situate on the Carnation placer claim on Flat Creek, and, while there, was informed by one of the workmen working on said Flat Creek Dredge for the defendant Alaska Mines Corporation, that the defendant Alaska Mines Corporation had dismantled said Wonder Dredge and had removed and taken some of its parts for use in the construction of said Flat Creek Dredge.

That affiant thereafter inspected the dredge known as the Bourbon Creek Dredge situate on one of the claims on lower Bourbon Creek near the power plant, and also inspected the said power plant; that on several occasions since the 22d day of August, 1917, affiant has been out and observed that the defendant Alaska Mines Corporation was operating said power plant and was using and operating the said Bourbon Creek dredge and actively engaged in mining and digging the placer ground and extracting [183] the gold therefrom. That affiant also observed that the said Flat Creek Dredge has been steadily running, operating and digging on said Carnation Placer claim, one of the claims mentioned in said exhibit above referred to. That the said defendant Alaska Mines Corporation is actively engaged in digging and extracting the gold from the said claims by the use of said dredges and said dredges are of large capacity, readily operated, and in a few weeks will dredge the valuable pay ground contained in said claims now being operated upon. That after the said

dredges pass through said claims, said claims will be rendered absolutely worthless and of no value. That the defendant Alaska Mines Corporation is now finishing and equipping what is known as the Greenberg or Bessie Dredge on Holyoke Creek, said dredge being of exceedingly large capacity and said defendant is intending to operate the said dredge by use of power from the said power plant on Bourbon Creek mentioned and described in the said list of property. That heretofore the said power plant has always been used in operating only the two dredges known as the Bourbon dredge and the Wonder Dredge; that said Wonder Dredge was much smaller in capacity than said Flat Creek dredge and if the said power plant has to furnish power for the said Bourbon Creek dredge and the said Flat Creek dredge and also for the said Greenberg or Bessie dredge on Holyoke Creek, the said power plant will be driven to its maximum capacity and will result in great damage and deterioration to said power plant.

That affiant has no interest in the result of this lawsuit.

W. M. EDDY.

Subscribed and sworn to before me this 4th day of September, 1917.

[Seal]

D. B. CHACE,

Notary Public for the Territory of Alaska, Residing at Nome.

My commission expires May 12th, 1921. [184]

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome, Sep. 6, 1917.
G. A. Adams, Clerk.

Whereupon the plaintiff offered in evidence the affidavit of William A. Gilmore, which said affidavit was read and received in evidence, being in the words and figures, as follows, to wit:

Affidavit of Wm. A. Gilmore—September 6, 1917.

(Title of Court and Cause.)

United States of America,
District of Alaska,—ss.

William A. Gilmore, being first duly sworn on oath, deposes and says:

That affiant was present at the taking of the deposition of defendant E. E. Powell yesterday at the office of the affiant in Nome and heard said Powell state under oath in the above-entitled cause that he resigned as manager of the defendant Nome Consolidated Dredging Company in the spring of 1915 and that he did not represent said company during the time the foreclosure proceedings were being conducted. That affiant was employed with Judge G. J. Lomen during the month of July, 1915, by several creditors of said defendant Nome Consolidated Dredging Company in an effort to have the said company adjudged an involuntary bankrupt in order to bring proceedings in the name of the trustee to set aside the fraudulent foreclosure proceedings mentioned in the complaint in this action; that among the creditors we represented were Thorulf Lehman, merchant of Nome, W. J. Rowe, transfer man, E. W. Carleton & Co., hardware company, and Scheid & Company, besides some others; that said E. E. Powell, acting as general manager of said defendant, made some ar-

rangements for temporary settlements with some of said creditors, and paid said [185] Scheid & Co. bill in full to said G. J. Lomen, its attorney, in my presence, taking a receipt in full from said attorney to the said Nome Consolidated Dredging Company, said payment being made by said Powell on the day before the sale by the United States marshal of all the assets of said company mentioned in plaintiff's complaint herein. That at the time of said foreclosure proceedings said E. E. Powell was in full control of all the financial affairs of said Nome Consolidated Dredging Company; that affiant since said month of July, 1915, was informed that many of the said creditors were never paid but still remain creditors of said company.

WILLIAM A. GILMORE.

Subscribed and sworn to this 6th day of September, 1917.

[Seal]

J. F. HOBBS,

Notary Public for Alaska, Residing at Nome.

My commission expires May 16, 1920.

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sept. 6, 1917. G. A. Adams, Clerk.

Whereupon the plaintiff rested.

Whereupon the said matter was argued to the Court by the attorneys for the plaintiff and the attorneys for the defendant Alaska Mines Corporation, and was submitted to the Court and taken under advisement by the Court for a decision.

BE IT FURTHER REMEMBERED that thereafter on the 22d day of September, 1917, the Court

entered and filed its written opinion on said motion for a receiver, which said opinion was in words and figures as follows, to wit:

Opinion on Application for Appointment of Receiver.

(Title of Court and Cause.) [186]

Without expressing any opinion on the questions of fraud, conspiracy and notice thereof to defendant alleged and involved in this case, but taking into consideration solely the relative assets and liabilities of the defendant corporation, the Court is of opinion that the application for a receiver should be denied, and an order will be so entered.

The evidence of Mr. Miles and others for the plaintiff shows plainly that the assets of the defendant corporation are considerably in excess of its liabilities, and this is not materially affected by the plaintiff's evidence; that the defendant corporation is a going concern; that considerable improvements have been recently made to its already valuable properties, and that further improvements are contemplated. The evidence also shows affirmatively that the property of defendant, Alaska Mines Corporation, is not in danger of loss from neglect, waste, or insolvency of said defendant corporation.

Nome, Alaska, Sept. 22, 1917.

J. R. TUCKER,
District Judge.

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 22, 1917.
G. A. Adams, Clerk.

The plaintiff at the time of the making, entering and filing of said opinion last hereinbefore set out duly excepted thereto and plaintiff's exception was duly allowed by the Court.

Whereupon the plaintiff gave notice in open court of appeal and the Court thereupon granted the plaintiff thirty days' time in which to prepare, serve and file its Bill of Exceptions. [187]

Order Settling and Allowing Bill of Exceptions.

BE IT FURTHER REMEMBERED, that the foregoing Bill of Exceptions contains all the evidence introduced at the hearings therein set forth and said bill having been served, filed and presented for settlement by the plaintiff within the time allowed by law and the orders of the Court duly entered, and now being found full, true and correct, is hereby settled and allowed.

Dated at Nome, Alaska, October 13th, 1917.

J. R. TUCKER,

Judge of the District Court, District of Alaska, Second Div.

The foregoing is Plaintiff's Proposed Bill of Exceptions in the above-entitled action.

October 9th, 1917.

T. M. REED and

WILLIAM A. GILMORE,

Attorneys for Plaintiff. [188]

Service by receipt of a copy of the within Bill of Exceptions admitted at Nome, Alaska, this 9th day of October, 1917.

O. D. COCHRAN,

Of Attorneys for Defendant Alaska Mines Corporation.

Service by receipt of a copy of the within corrected, amended, Bill of Exceptions as signed and filed, admitted at Nome, Alaska, this 13th day of October, 1917.

O. D. COCHRAN,
Of Attorneys for Defendant Alaska Mines Corporation.

[Endorsed]: No. 2734. In the District Court for the District of Alaska, Second Division. American Manganese Steel Co., a Corporation, Plaintiff, vs. Alaska Mines Corporation, a Corporation, et al., Defendants. Bill of Exceptions. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 9, 1917. G. A. Adams, Clerk. By —————, Deputy. L. Refiled in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 13, 1917. G. A. Adams, Clerk. By W. C. McG., Deputy.
[189]

*United States District Court, District of Alaska,
Second Division.*

AMERICAN MANGANESE STEEL COMPANY,
etc.,

Plaintiff,

vs.

ALASKA MINES CORPORATION, etc., et al.,
Defendants.

**Opinion on Application for Appointment of
Receiver.**

Without expressing any opinion on the questions

of fraud, conspiracy and notice thereof to defendant alleged and involved in this case, but taking into consideration solely the relative assets and liabilities of the defendant corporation, the Court is of opinion that the application for a receiver should be denied, and an order will be so entered.

The evidence of Mr. Miles and others for the plaintiff shows plainly that the assets of the defendant corporation are considerably in excess of its liabilities, and this is not materially affected by the plaintiff's evidence; that the defendant corporation is a going concern; that considerable improvements have been recently made to its already valuable properties, and that further improvements are contemplated. The evidence also shows affirmatively that the property of defendant, Alaska Mines Corporation, is not in danger of loss from neglect, waste, or insolvency of said defendant corporation.

Nome, Alaska, Sept. 22, 1917.

J. R. TUCKER,
District Judge.

[Endorsed]: #2734. United States District Court, District of Alaska, Second Division. [190] American Manganese Steel Company, etc., Plaintiff, vs. Alaska Mines Corporation, etc., et al., Defendants. Opinion on Application for Appointment of Receiver. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 22, 1917. G. A. Adams, Clerk. By W. C. McG., Deputy. [191]

*In the District Court for the District of Alaska,
Second Division.*

Term Minutes, General, 1917, Term Beginning
January 13, 1917.

Court convening pursuant to adjournment, Honorable J. R. TUCKER, District Judge, presiding.

Upon the convening of court the following proceedings were had:

* * * * * * * *

**Minutes of Court—September 27, 1917—Re Filing of
Opinion Denying Application for Appointment
of Receiver, etc.**

Saturday, September 22d, 1917, 11 A. M.

2734.

AMERICAN MANGANESE STEEL CO.

vs.

ALASKA MINES CORPORATION, et al.

Opinion read denying application for appointment of receiver, exception being taken and allowed to plaintiff's counsel. Opinion filed.

* * * * * * * *

2734.

AMERICAN MANGANESE STEEL CO.

vs.

ALASKA MINES CORPORATION et al.

Counsel Gilmore, for plaintiff, gave oral notice of intention to appeal from the order denying application for a receiver and on motion was granted thirty days in which to prepare and file bill of exceptions.

* * * * * * * *

Whereupon court adjourned until 10 A. M., Monday, September 24th, 1917. [192]

*In the District Court for the District of Alaska,
Second Division.*

No. 2734.

AMERICAN MANGANESE STEEL COMPANY,
a Corporation,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corporation,
NOME CONSOLIDATED DREDGING COMPANY, a Corporation,
ALASKA DREDGING COMPANY, a Corporation, E. E. POWELL,
GEORGE D. SCHOFIELD, J. M. SLOAN, E. L. WEBSTER, M. W. NEWTON,
LOUIS EISENLOHR, F. H. THATCHER, Trustee, C. E. DARLING,
Trustee, and E. E. POWELL, Trustee,
Defendants.

**Petition for and Order Allowing Appeal and Fixing
Amount of Bond.**

Comes now the American Manganese Steel Company, a corporation, plaintiff herein, and believing itself aggrieved by a certain order and opinion made and entered herein on the 22d day of September, 1917, refusing and denying the plaintiff's motion for a receiver *pendente lite*, hereby appeals from said order to the United States Circuit Court of Appeals for the Ninth Circuit, and hereby prays that said ap-

peal be allowed and that an order be made fixing the amount of bonds for costs on appeal to be given by appellant.

T. M. REED and
WILLIAM A. GILMORE,
Attorneys for American Manganese Steel Company,
a Corporation, Plaintiff.

On this 13th day of October, 1917, IT IS HEREBY ORDERED that said appeal as above prayed for be allowed, and the amount of the bond for costs to be given by appellant is hereby fixed at Two Hundred Fifty and 00/100 (\$250.00) Dollars.

J. R. TUCKER,
Judge District Court, District of Alaska, Second
Division. [193]

Due and timely service of the above and foregoing Petition for Appeal and Order Allowing Said Appeal and Fixing the Cost Bond acknowledged by receipt of a copy thereof this 13th day of October, 1917.

O. D. COCHRAN,
Of Attorneys for Defendant Alaska Mines Corporation, a Corporation.

No. 2734. In the District Court for the District of Alaska, Second Division. American Manganese Steel Company, a Corporation, Plaintiff, vs. Alaska Mines Corporation, a Corporation, et al., Defendants. Petition for Appeal and Order Allowing Said Appeal and Fixing the Amount of Cost Bond. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 13, 1917. G. A. Adams, Clerk. By W. C. McG., Deputy. Wm. A. Gilmore, of Attorneys for Plaintiff. [194]

*In the District Court for the District of Alaska,
Second Division.*

No. 2734.

AMERICAN MANGANESE STEEL COMPANY,
a Corporation,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corpora-
tion, NOME CONSOLIDATED DREDG-
ING COMPANY, a Corporation, ALASKA
DREDGING COMPANY, a Corporation, E.
E. POWELL, GEORGE D. SCHOFIELD,
J. M. SLOAN, E. L. WEBSTER, M. W.
NEWTON, LOUIS EISENLOHR, F. H.
THATCHER, Trustee, C. E. DARLING,
Trustee, and E. E. POWELL, Trustee,

Defendants.

Undertaking for Costs on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, American Manganese Steel Corporation, a
corporation, as principal and H. Greenberg and J. J.
Cole, as sureties, are held and firmly bound unto
Alaska Mines Corporation, a corporation, defendant
in the above-entitled action, in the sum of Two Hun-
dred Fifty and 00/100 (\$250.00) Dollars, lawful
money of the United States of America, for the pay-
ment of which, well and truly to be made, we bind
ourselves, and our and each of our heirs, executors
and administrators, jointly and severally, firmly by
these presents.

SEALED WITH OUR SEALS and dated at Nome, Alaska, this 13th day of October, 1917.

The condition of this bond is such that,

WHEREAS, an order has been made and entered in the above-entitled action allowing the appeal of the plaintiff to the United States Circuit Court of Appeals for the Ninth Circuit, from a certain order and opinion made and entered herein in the above-entitled cause on the 22d day of September, 1917, denying and refusing [195] the plaintiff's motion for the appointment of a receiver, *pendente lite*, and a citation is about to issue citing and admonishing the said defendant, Alaska Mines Corporation, a corporation, to be and appear at a term of said Circuit Court of Appeals to be held in the city of San Francisco, State of California, and show cause why said order should not be reversed:

NOW, THEREFORE, if the appellant, American Manganese Steel Company, a corporation, will prosecute said appeal to effect and answer all costs, if it fails to sustain its appeal, then this obligation shall be void, otherwise to remain in full force and effect.

AMERICAN MANGANESE STEEL COM-
PANY, [Seal]

By WILLIAM A. GILMORE,
Its Attorney.

H. GREENBERG. (Seal)

J. J. COLE. (Seal)

United States of America,
District of Alaska,—ss.

H. GREENBERG and J. J. COLE, being first duly sworn, each for himself and not one for the other deposes and says:

That he is a resident of Nome, Alaska, and a surety on the within and foregoing undertaking; that he is not a counsellor or attorney at law, marshal, deputy marshal, commissioner, clerk of any court or other officer of any court, and that he is worth the sum of Two Hundred Fifty and 00/100 (\$250.00) Dollars over and above all just debts and liabilities and exclusive of property exempt from execution.

H. GREENBERG.

J. J. COLE.

Subscribed and sworn to before me this 13th day of October, 1917.

[Seal]

WILLIAM A. GILMORE.

Notary Public in and for the District of Alaska.

My commission expires July 27, 1919.

The above and foregoing bond is hereby approved.

Done in open court this 13th day of October, 1917.

J. R. TUCKER,

Judge, District Court, District of Alaska, Second
Division. [197]

Due and timely service of above and foregoing Undertaking for costs on Appeal acknowledged by receipt of a copy this 13th day of October, 1917.

O. D. COCHRAN,

Of Attorneys for Defendant Alaska Mines Corporation, a Corporation.

No. 2734. In the District Court for the District of Alaska, Second Division. American Manganese Steel Company, a Corporation, Plaintiff vs. Alaska Mines Corporation, a Corporation, et al., Defendants. Undertaking for Costs on Appeal. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 13, 1917. G. A. Adams, Clerk. By W. C. McG., Deputy. Wm. A. Gilmore, of Attorneys for Plaintiff. [198]

In the District Court for the District of Alaska, Second Division.

No. 2734.

AMERICAN MANGANESE STEEL COMPANY,
a Corporation,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corporation,
NOME CONSOLIDATED DREDGING COMPANY, a Corporation, ALASKA DREDGING COMPANY, a Corporation,
E. E. POWELL, GEORGE D. SCHOFIELD,
J. M. SLOAN, E. L. WEBSTER, M. W. NEWTON, LOUIS EISENLOHR, F. H. THATCHER, Trustee, C. E. DARLING, Trustee, and E. E. POWELL, Trustee,
Defendants.

**Assignment of Errors on Appeal from Interlocutory
Order Refusing and Denying Plaintiff's Motion
for a Receiver Pendente Lite.**

Comes now the plaintiff, American Manganese Steel Company, a corporation, in the above-entitled action and assigns the following errors as having been committed by the Court in making and entering its order and opinion refusing and denying the plaintiff's motion for a receiver *pendente lite* in the above-entitled action on the 22d day of September, 1917, upon which errors said plaintiff will and does rely upon its appeal from said order to the United States Circuit Court of Appeals for the Ninth Circuit.

1.

The Court erred in making and entering said order and opinion refusing and denying the plaintiff's motion for a receiver *pendente lite* in the above-entitled action for the following reasons:

First: Because it appears from the record that the plaintiff was entitled to the appointment of a receiver to take possession of the assets, real and personal, involved in the litigation.

Second: Because it appears from the record that the plaintiff was entitled to the receiver to preserve the said assets *pendente lite* from waste and depreciation.

Third: Because it appears from the record that the defendant, [199] Alaska Mines Corporation, a corporation, took the said assets in dispute, both real and personal, with full notice and knowledge

of the rights of the plaintiff as a creditor of the Nome Consolidated Dredging Company.

Fourth: Because it appears from the record undisputed that the said assets were confiscated and taken from the said Nome Consolidated Dredging Company by fraud, and that the defendant, Alaska Mines Corporation, a corporation, had knowledge of said fraudulent acts.

Fifth: Because it appears from the record that the Alaska Mines Corporation, a corporation, has no other assets save and except the assets involved in this action, and that a receiver *pendente lite* is necessary to prevent said assets from becoming further encumbered from mortgages or liens, or squandered or dissipated pending the hearing of this suit on its merits.

Sixth: Because it appears affirmatively in the record that the Alaska Mines Corporation was not a *bona fide* purchaser of said assets.

Seventh: Because it further appears from the record that if the plaintiff prevails on the merits at the trial of the action a receiver should be necessary to take possession and sell the said assets to pay the judgment of the plaintiff.

2.

The Court erred in making and entering said order refusing and denying plaintiff's said motion for a receiver *pendente lite* because it appears from the record that it is an abuse of discretion in the trial court in permitting the defendant Alaska Mines Corporation to hold possession, use and enjoy the property in dispute, real and personal, and the proceeds thereof *pendente lite*. [200]

3.

The Court erred in making and entering said order refusing and denying plaintiff's said motion for a receiver *pendente lite* because it was contrary to equity and justice.

WHEREFORE, plaintiff American Manganese Steel Company, a corporation, prays that said order so made and entered on the 22d day of September, 1917, refusing and denying the plaintiff's motion for a receiver *pendente lite* in the above-entitled action, be reversed and that a mandate may issue ordering and directing the above-entitled court to appoint a receiver *pendente lite* to take possession, control, hold and preserve the said assets, real and personal, *pendente lite*.

Dated at Nome, Alaska, this 13th day of October, 1917.

T. M. REED and

WILLIAM A. GILMORE,

Attorneys for Plaintiff, American Manganese Steel Company, a Corporation.

Due and timely service of the above and foregoing Assignment of Errors acknowledged by a receipt of a copy thereof at Nome, Alaska, this 13th day of October, 1917.

O. D. COCHRAN,

Of Attorneys for Defendant Alaska Mines Corporation, a Corporation.

[Endorsed]: No. 2734. In the District Court for the District of Alaska, Second Division. American Manganese Steel Company, a Corporation, Plaintiff, vs. Alaska Mines Corporation, a Corporation,

et al., Defendants. Assignment of Errors. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 13, 1917. G. A. Adams, Clerk. By W. C. McG., Deputy. Wm. A. Gilmore, of Attorneys for Plaintiff. [201]

In the District Court for the District of Alaska, Second Division.

No. 2734.

AMERICAN MANGANESE STEEL COMPANY,
a Corporation,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corporation,
NOME CONSOLIDATED DREDGING COMPANY, a Corporation, ALASKA DREDGING COMPANY, a Corporation,
E. E. POWELL, GEORGE D. SCHOFIELD,
J. M. SLOAN, E. L. WEBSTER, M. W. NEWTON, LOUIS EISENLOHR, F. H. THATCHER, Trustee, C. E. DARLING, Trustee, and E. E. POWELL, Trustee,
Defendants.

Order Enlarging Time Sixty Days After Return Day of Citation to File Record and Docket Cause in Appellate Court.

On motion of counsel for American Manganese Steel Company, a corporation, appellant in the above-entitled suit,

IT IS HEREBY ORDERED that the time for filing and docketing the transcript and record in the

above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, State of California, upon an appeal from an interlocutory order refusing and denying the plaintiff's motion for a receiver *pendente lite*, be, and the same is hereby enlarged sixty days after the return day of the citation issued on said appeal.

Done in open court at Nome, Alaska, this 13th day of October, 1917.

J. R. TUCKER,

Judge, District Court, District of Alaska, Second Division.

Due and timely service of the above and foregoing Order enlarging time to file record and docket case is hereby acknowledged by receipt of a copy thereof at Nome, Alaska, this 13th day of October, 1917.

O. D. COCHRAN,

Of Attorneys for Defendant Alaska Mines Corporation, a Corporation. [202]

[Endorsed]: No. 2734. In the District Court for the District of Alaska, Second Division. American Manganese Steel Company, a Corporation, Plaintiff, vs. Alaska Mines Corporation, a Corporation, et al., Defendants. Original Order Enlarging Time to File Record and Docket Case. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 13, 1917. G. A. Adams, Clerk. By W. C. McG., Deputy. Wm. A. Gilmore, of Attorneys for Plaintiff. [203]

*In the District Court for the District of Alaska,
Second Division.*

No. 2734.

AMERICAN MANGANESE STEEL COMPANY, a
Corporation,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corporation,
N O M E CONSOLIDATED DREDGING
COMPANY, a Corporation, ALASKA
DREDGING COMPANY, a Corporation, E.
E. POWELL, GEORGE D. SCHOFIELD, J.
M. SLOAN, E. L. WEBSTER, M. W. NEW-
TON, LOUIS EISENLOHR, F. H. THAT-
CHER, Trustee, C. E. DARLING, Trustee,
and E. E. POWELL, Trustee,

Defendants.

Praeipce for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please prepare and certify transcript of the record in the above-entitled action on the plaintiff's appeal from the Court's order refusing and denying the plaintiff's motion for a receiver *pendente lite*, said record to consist of the Bill of Exceptions heretofore signed and filed, together with the appeal papers, and also a copy of the Court's opinion, as required by rules of the Court of Appeals, denying and refusing plaintiff's motion for a receiver, together with the minute orders of the Court in the above-entitled action for September 22, 1917.

Dated at Nome, Alaska, this 13th day of October, 1917.

T. M. REED and
WILLIAM A. GILMORE,
Attorneys for Plaintiff.

[Endorsed]: No. 2734. In the District Court for the District of Alaska, Second Division. American Manganese Steel Company, a Corporation, Plaintiff, vs. Alaska Mines Corporation, a Corporation, et al., Defendants. Praeceptum for Transcript of Record. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 13, 1917. G. A. Adams, Clerk. By W. C. McG., Deputy. Wm. A. Gilmore, of Attorneys for Plaintiff. [204]

*In the District Court for the District of Alaska,
Second Division.*

No. 2734.

AMERICAN MANGANESE STEEL COMPANY, a
Corporation,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corporation,
N O M E C O N S O L I D A T E D D R E D G I N G
C O M P A N Y, a Corporation, ALASKA
D R E D G I N G C O M P A N Y, a Corporation, E.
E. POWELL, GEORGE D. SCHOFIELD, J.
M. SLOAN, E. L. WEBSTER, M. W. NEW-

TON, LOUIS EISENLOHR, F. H. THATCHER, Trustee, C. E. DARLING, Trustee, and E. E. POWELL, Trustee,

Defendants.

Citation on Appeal from Order Refusing and Denying Plaintiff's Motion for a Receiver Pendente Lite.

United States of America,—ss.

The President of the United States of America to the Alaska Mines Corporation, a Corporation, Defendant, GREETING:

YOU ARE HEREBY CITED and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, State of California, on the 10th day of November, 1917, pursuant to an order allowing an appeal filed in the office of the clerk of the District Court, District of Alaska, Second Division, from a certain interlocutory order refusing and denying the plaintiff's motion herein for a receiver *pendente lite* made, filed, and entered in said court on the 22d day of September, 1917, in that certain suit in equity wherein you, the said Alaska Mines Corporation, a corporation, are a defendant and the American Manganese Steel Company, a corporation, is plaintiff, to show cause, if any there be, why the said interlocutory order rendered against the said American Manganese Steel Company, a corporation, as in said order allowing appeal mentioned should not be [205] reversed, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD D. WHITE,
Chief Justice of the Supreme Court of the United
States of America, this 13th day of October, 1917.

J. R. TUCKER,
Judge, District Court, District of Alaska, Second
Division.

Attest my hand and seal of the United States
District Court for the District of Alaska, Second
Division, at the clerk's office, at Nome, Alaska, this
13th day of October, 1917.

[Seal] G. A. ADAMS,
Clerk of the District Court, District of Alaska, Sec-
ond Division. [206]

Due and timely service of the above and foregoing
Citation is hereby acknowledged by receipt of a copy
thereof at Nome, Alaska, this 13th day of October,
1917.

O. D. COCHRAN,
Of Attorneys for Defendant Alaska Mines Corpora-
tion, a Corporation. [207]

[Endorsed]: No. 2734. In the District Court for
the District of Alaska, Second Division. American
Manganese Steel Company, a Corporation, Plaintiff,
vs. Alaska Mines Corporation, a Corporation, et al.,
Defendants. Citation. Filed in the Office of the
Clerk of the District Court of Alaska, Second Di-
vision, at Nome, Oct. 13, 1917. G. A. Adams, Clerk.
By W. C. McG., Deputy.

*In the District Court for the District of Alaska,
Second Division.*

No. 2734.

AMERICAN MANGANESE STEEL COMPANY, a
Corporation,

Plaintiff,

vs.

ALASKA MINES CORPORATION, a Corporation,
et al.,

Defendants.

**Certificate of Clerk U. S. District Court to Transcript
of Record.**

I, G. A. Adams, clerk of the District Court of Alaska, Second Division, do hereby certify that the foregoing typewritten pages, from 1 to 208, both inclusive, are a true and exact transcript of the Bill of Exceptions, Court's opinion denying and refusing to appoint a receiver, minute orders of the court in the above-entitled action for September 22d, 1917, petition for appeal and order allowing appeal, undertaking for costs on appeal, assignment of errors, order enlarging time to file record and docket case, and praecipe for transcript of record, in the above-entitled action, and of the whole thereof, as appears from the records and files in my office at Nome, Alaska; and further certify that the original citation in the above-entitled action is attached to this transcript.

Cost of transcript \$105.05, paid by William A. Gilmore, of attorneys for plaintiff.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 16th day of October, A. D. 1917.

[Seal]

G. A. ADAMS,
Clerk. [208]

[Endorsed]: No. 3076. United States Circuit Court of Appeals for the Ninth Circuit. American Manganese Steel Company, a Corporation, Appellant, vs. Alaska Mines Corporation, a Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Second Division.

Filed November 10, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

